Federal Register

11–4–04 Thursday
Vol. 69 No. 213 Nov. 4, 2004

Pages 64245–64474

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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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 02–070–3]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by adding the fluorescence polarization assay to the lists of confirmatory and official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. This action is warranted because the fluorescence polarization assay has been shown to provide an efficient, accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the fluorescence polarization assay to the lists of confirmatory and official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

DATES: Effective December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Bldg. B. MSC 3E20, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

On May 6, 2004, we published in the **Federal Register** (69 FR 25338–25340, Docket No. 02–070–1) a proposal to amend the regulations by adding the fluorescence polarization (FP) assay to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. In our proposed rule, we made available a complete report of field trial and testing results for validation of the FP assay in cattle, bison, and swine; that information may be viewed on the Internet at *http://www.aphis.usda.gov/vs/nahps/brucellosis/* or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

We solicited comments concerning our proposal for 60 days ending June 21, 2004. We subsequently reopened the comment period until July 21, 2004, in a document published in the **Federal Register** on July 6, 2004 (69 FR 40556, Docket No. 02–070–2). We received nine comments by that date. The comments were from researchers, test equipment manufacturers, representatives of State governments, animal welfare organizations, and private citizens. They are discussed below by topic.

Some commenters stated that the Animal and Plant Health Inspection Service's (APHIS's) intentions regarding testing on wild bison were unclear in the proposed rule and that a statement should be added in the final rule clarifying that we do not intend to use the FP assay on wild bison. The commenters requested that APHIS provide additional information, including an additional disclosure of all FP assay validation data for bison, an analysis of FP assay data from Yellowstone National Park bison sampled in the winter of 2002–2003, and a description of the specific FP assay procedures that would be used on Yellowstone bison. The commenters stated that even if APHIS were to provide this additional information to their satisfaction, APHIS would need to prove that it had legal authority over wild bison. The commenters admitted that while ''animal,'' as defined by the Animal Health Protection Act (AHPA), includes wild animals, the Act limits APHIS's authority to domestic livestock and other animals that are under human control. The commenters contended that the FP assay cannot be applied to wild animals because their movements are not associated with interstate trade or importation. The commenters added that the only circumstances in which APHIS would have control over wildlife is if the Secretary determines that an extraordinary emergency exists because of the presence in the United States of a pest or disease that threatens U.S. livestock. The commenters note that the Secretary has not done so for brucellosis to date.

With respect to the commenters' request for additional information, we note that the data and analyses sought by the commenters are summarized in the report we made available with the proposed rule. As noted earlier in this document, the report may be viewed on the Internet at *http://www.aphis.usda.gov/vs/nahps/brucellosis/* and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. We believe the data provided is adequate to support our addition of the FP assay to the list of official and confirmatory tests for brucellosis. The commenters have been informed in the past that they may request the specific data they are seeking from its source (*i.e.*, the Montana Veterinary Diagnostic Lab).

We do not agree with the commenters' characterization of APHIS's authority under the AHPA. For example, the AHPA gives APHIS broad authority ''to carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals)'' (7 U.S.C. 8308). This provision clearly includes testing of wild animals if it is determined that such animals pose a threat of spreading disease to U.S. livestock. As the commenter noted, the term ''animal'' is defined to include any member of the animal kingdom. In the past wild bison and elk have been identified as the source of brucellosis infection in domestic livestock, and we will test such animals when we believe it is necessary to prevent the further spread of brucellosis in livestock.

One commenter suggested that we amend our proposed changes to the definition of *official test* in § 78.1 to describe the circumstances under which the FP assay would be approved as a stand alone test.

We are approving the FP assay as an official test, meaning it can be carried out whenever it is considered necessary to test cattle, bison, and swine for brucellosis. We agree with this commenter that the FP assay is also recognized as a confirmatory test, but rather than amending paragraph (a)(13) of the definition of *official test* as the commenter suggested, we have amended the definition of *confirmatory test* in § 78.1 in this final rule by adding the FP assay to the list of confirmatory tests. This change will allow for the FP assay to be used as a stand alone test or in combination with other serologic tests. In addition, because the FP assay's performance characteristics compare favorably to the complement-fixation test (CFT), and because the CFT is already recognized by APHIS as a confirmatory test, the FP assay is also considered a reliable confirmatory test for brucellosis. Nevertheless, the decision as to which diagnostic tests to use depends on the situation and the State where the testing is done. Ultimately, the standard serologic protocol used in each Federal/State cooperative brucellosis laboratory depends on the laboratory's cooperative agreement.

Some commenters stated that APHIS and/or other agencies involved in Yellowstone bison management must first evaluate the potential impacts of the FP assay on bison in the Greater Yellowstone Area before using the test on wild bison. They requested an environmental assessment be conducted evaluating potential environmental effects on using the test on wild bison in the Yellowstone area.

We have determined that an environmental assessment is not needed in connection with our addition of the FP assay to the lists of official and confirmatory tests. With respect to bison, by adding the FP assay to the lists of official and confirmatory tests, we are merely saying that it is a tool that can be used for test-eligible bison (with no distinction between domestic and wild bison) without requiring its use. The record of decision (ROD) for the environmental impact statement (EIS) prepared for the Bison Management Plan [1] contemplates the use of more efficient and effective tests as they become available. It will result in a more effective means of identifying animals that are likely carriers of brucellosis. By using the FP assay, we will be making the program more effective.

[1] The ROD can be found at *http://www.planning.nps.gov/document/yellbisonrod.pdf.*

Some commenters requested proof that the test's validation process is consistent with Office of International Epizooties (OIE) standards. The commenters contended that APHIS did not follow the appropriate process, as set by OIE, in validating the FP assay, which includes conducting an estimate of the disease prevalence in the specific population and ensuring that diagnostic sensitivity and specificity estimates are as accurate as possible.

We believe that the FP assay validation process was consistent with OIE standards. In fact, the FP assay is recognized by OIE as one of four serologic tests recommended for use in diagnosing bovine brucellosis. According to OIE's *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals,* ''The diagnostic performance characteristics of some enzyme-linked immunosorbent assays (ELISAs) and the fluorescence polarisation assay (FPA) are comparable with or better than that of the CFT, and as they are technically simpler to perform and more robust, their use may be preferred.'' In addition, the manual recognizes the FP Assay as a screening and/or confirmatory test for brucellosis in swine.

Evidence has previously been presented in the FP assay validation report regarding the performance of the FP assay among cattle, bison, and swine populations in several countries, including Canada and the United States. OIE's *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals* states that *B. abortus* infection follows a similar course in buffaloes (*Bubalus bubalus*), bison (*Bison bison*), yak (*Bos grunniens*), elk (*Cerves canadensis*), camels (*Camelus bactrianus* and *C. dromedarius*), and cattle. The manual adds that the same serological procedures may be used for these species, but each test should be validated in the species under study. Given this criterion, the evidence presented in the report sufficiently establishes the validity of the FP assay for brucellosis in cattle, bison, and swine. Furthermore, the criterion does not suggest that a separate validation is necessary for wild populations of bison.

Some commenters stated that the FP assay suffers from the same flaw that other brucellosis tests do in that it can only detect exposure, not infection. The commenters stated that no research was done regarding the potential for cross-reactive antibodies in wild bison that might result in false-positive results and contended that the use of this test on wild bison will lead to the additional slaughter of bison that were only exposed but not infected.

Research shows the FP assay to be highly accurate, easily performed, and more effective than other brucellosis tests. We believe this will lead to animals being more accurately diagnosed and prevent the unnecessary slaughter of uninfected bison.

The FP assay validation report contained data showing the FP assay, in one study, to have 100 percent sensitivity. Some commenters took issue with this conclusion. The commenters noted that some data in the report indicated that a large number of serologically positive animals were later found to have been slaughtered unnecessarily because they were culture-negative and therefore not infected.

The commenters are incorrect in their calculations of sensitivity. Sensitivity is determined by calculating the proportion of infected animals that are positive to the test under consideration. One hundred percent of the animals that were culture-positive were positive to the FP assay, for a sensitivity of 100 percent. And 100 percent of the animals that were serologically positive to other tests were positive to the FP assay, again a sensitivity of 100 percent. Nevertheless, these results are from one study of the FP assay's performance. Another study cited in our technical report found the FP assay to have a 92 percent sensitivity (Gall 2000). It is not expected that any serologic test is truly 100 percent sensitive, but in comparison with other serologic brucellosis assays, the studies show that the FP assay has consistently high sensitivity. As stated in our response to the previous comment, we believe the accuracy, ease of use, and effectiveness of the FP assay will lead to more accurate diagnoses of brucellosis and prevent the unnecessary slaughter of uninfected animals.

Two commenters took issue with the description of the testing procedure we provided in the proposed rule's supplementary information section. The commenters stated that we described an indirect binding or competitive binding assay, but the FP assay is actually a direct binding assay. Both commenters recommended we describe the procedure as follows:

> The brucellosis FP diagnostic assay is a direct binding assay that uses fluorescence polarization technology to determine the presence of *Brucella abortus* antibody in serum indicating current or previous infection. The diagnostic test uses as its conjugate a fluorescent antigen that is composed of the O-polysaccharide (OPS) extracted from *Brucella abortus* cells and labeled with fluorescein. A fluorescence polarization instrument is used to measure the polarization state of the OPS conjugate.

A quantitative score indicates the presence of the antibody or no presence of the antibody.

The technician performs the test as follows. A specific quantity of a sample of animal serum is added to a glass test tube or microtitre plate well containing a specified amount of buffer solution. The fluorescence polarization measurement instrument is used to determine the natural fluorescence of the sample in the buffer solution. Then, the technician adds a specific quantity of fluorescent conjugate antigen. And then the fluorescence polarization instrument measures the change in fluorescence polarization of the conjugate which indicates if the antibody is present in the sample.

We agree that the text suggested by the commenters clarifies the FP assay's binding type. However, because the paragraphs pointed out by the commenters appeared only in the proposed rule's supplementary information section, it is not necessary to make any changes in the regulatory text of this final rule in response to the comments.

One commenter suggested that we retain the provisions that were found in paragraph (a)(13) of the definition of *official test* in § 78.1 regarding the authority of the designated epidemiologist in each State to act on his/her best judgment when making diagnoses of brucellosis based on an assessment of all relevant information. In addition, the commenter recommended adding the same statement with respect to swine in the definition of *official test* be consistent with the provisions concerning cattle and bison.

It appears that the commenter misunderstood; we did not propose to remove the text of paragraph (a)(13) in the definition of *official test* from the current regulations, but instead to redesignate the paragraph as (a)(14). With respect to the commenter's suggestion that we add a similar statement regarding the role of designated epidemiologists in making diagnoses of brucellosis in swine, we agree with the commenter and have added such a statement in this final rule as a new paragraph (b)(6) in the definition of *official test.*

Some commenters stated that while the assay interpretation for swine is the same as that for bison and cattle, the FP assay for swine uses 40 microliters of sample instead of the 10 microliters of sample used for cattle and bison. For suspect swine samples, the test is repeated using a 40-microliter sample, whereas the sample size is doubled (to 20 microliters) when repeating the test for suspect cattle and bison samples.

We agree with these commenters and have changed all references to sample amounts to 40 microliters in paragraph (b)(5) of the definition of *official test.* In addition, we have added sentences to paragraphs (a)(13) and (b)(5) of that definition to explain that 10 microliters and 40 microliters, respectively, of sample are used in the initial testing.

The supplementary information of our proposal described a test tube being used to perform the FP assay. Two commenters noted that the FP assay can be conducted in either a test tube or a microtiter plate format.

We agree with these commenters and acknowledge so in this final rule. However, this information appeared in the background information of the proposed rule and did not appear in the text of the proposed regulations.

One commenter suggested adding a sentence to the background information stating that FP assay technology has been developed for numerous human applications.

We believe it is unnecessary to describe human applications of FP assay technology in this rule concerning brucellosis in cattle, bison, and swine.

One commenter stated that the concentration immunoassay technology (CITE®) test is no longer being manufactured and references to it should be removed and the FP assay should be put in their place.

We are not removing the CITE® test at this time because while it may no longer be manufactured, it is possible that it will be available sometime in the future. Rather than undergo the process of adding it to the regulations again, we will leave it on the list of official tests.

One commenter suggested adding the following sentence to the economic analysis's discussion of the price of the FP assay: ''A smaller test kit size is being planned. High volume purchases are expected to have pricing discounts.''

We have added a statement to the economic analysis indicating the possibility of smaller kits in the future and the possible effects on test kit prices. The addition of this statement has no effect on the conclusions of our economic analysis, however.

One commenter stated that cattle should be kept out of areas where bison live. The commenter added that we should perform brucellosis tests on all cattle within 20 miles of bison. The commenter also suggested that all cattle movement between States stop.

We do not believe that such extreme steps are warranted or necessary to prevent the spread of brucellosis in the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations by adding the FP assay to the lists of confirmatory and official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. This action is warranted because the FP assay has been shown to provide an efficient, accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the FP assay to the lists of confirmatory and official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

This new test will help to prevent the spread of brucellosis by identifying infected cattle, bison, and swine. Preventing the spread of brucellosis is critical because of its potentially costly consequences for U.S. herd owners and consumers. In 1952, when brucellosis was widespread throughout the United States, annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency were estimated to total more than $400 million. Since then, eradication efforts have reduced annual losses due to brucellosis to less than $1 million. However, studies have shown that if eradication efforts were stopped, the cost of producing beef and milk would increase by an estimated $80 million annually in less than 10 years.

While the test will provide long-term benefits by identifying animals infected with brucellosis, herd owners with animals that are found to be positive as a result of the FP assay, or any other official test, may experience some negative consequences. Once an infected herd is identified, the infection is contained by quarantining all infected animals and limiting their movement to slaughter only, until the disease can be eliminated from the herd. Quarantines affect the current income of herd owners, and depopulation affects their future income. Depopulation costs are mitigated by the sale of affected animals for slaughter and indemnity payments, but, in many cases, indemnification provides only partial compensation.

However, there is no basis to conclude that the addition of the FP assay as an official and confirmatory test for brucellosis will result in more positive finds in privately owned herds

than another official or confirmatory test might indicate. Although research indicates that the FP assay can be a more accurate test, improved accuracy does not necessarily mean more positive finds; instead, the FP assay may yield fewer false positives than other tests, simply because it is more accurate.

We do not expect that adding the FP assay to the lists of official and confirmatory tests for brucellosis will affect the market price of animals tested. Although more rapid testing may allow faster marketing, the effect on herd owners is not expected to be significant.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. We expect that the entities that will be affected by the addition of the FP assay to the lists of official and confirmatory tests will be herd owners, test reagent and equipment producers, livestock markets, shows, and exhibitions, and livestock buyers and sellers. It is anticipated that affected entities will be positively affected because the use of this test should provide greater assurance of the brucellosis status of the animals tested.

Affected herd owners are likely to be small in size (when judged by the U.S. Small Business Administration's (SBA) standards). This determination is based on composite data for providers of the same and similar services. The latest Census data show that, in 2002, there were 736,968 farms in the United States primarily engaged in beef cattle ranching and farming and dairy cattle and milk production. In 2002, 98 percent of those farms had sales of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Similarly, in 2002, there were 33,655 U.S. farms primarily engaged in raising hogs and pigs. Of those farms, 81 percent had sales that year of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Additionally, in 2002, there were 41,238 farms listed under North American Industry Classification System code 11299, the classification category that includes farms primarily engaged in bison farming. The per-farm average sales for those 41,238 farms in 2002 was $39,868, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Accordingly, most herd owners potentially affected by this rule will be small entities.

The test will be performed at Federal/State cooperative brucellosis laboratories. Depending upon the Federal/State brucellosis cooperative agreement, APHIS may supply the reagents and equipment for performing this test. If APHIS supplies the reagents and equipment, it is anticipated that the test cost to the livestock producer will be the same as for the other brucellosis test options.

Currently, the reagents are sold in two kit sizes, a 1,000-test kit ($1.00/test) and a 10,000-test kit ($0.50/test). The costs to the laboratory to perform the test will vary, depending upon the number of tests performed. The test kit manufacturer has indicated that a smaller test kit size is being planned and that high volume purchases are expected to have pricing discounts. However, we currently have no information indicating what those discounts may be.

A consideration that may affect the livestock producer is whether the test is performed by a federally accredited veterinarian at a livestock market. If the market inspecting veterinarian uses the test, the cost may vary depending upon the agreement the veterinarian has with the State to perform brucellosis testing at the market.

It is anticipated that the test reagent and equipment producers will benefit from increased sales due to increased usage of the test. With increased usage of the test, the cost of the reagents and equipment should decline over time.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 78.1 is amended as follows:

■ a. In the definition of *confirmatory test,* in the second sentence, by adding the words, ''the fluorescence polarization assay (FP assay),'' before the words ''the particle''.

■ b. In the definition of *official test,* by redesignating paragraph (a)(13) as paragraph (a)(14) and by adding new paragraphs (a)(13), (b)(5), and (b)(6) to read as set forth below.

§ 78.1 Definitions.

* * * * *

Official test. (a) * * *

(13) *Fluorescence polarization assay (FP assay).* An automated serologic test to determine the brucellosis status of test-eligible cattle and bison when conducted according to instructions approved by APHIS. FP assays are interpreted as either positive, negative, or suspect. A 10-microliter sample is used. If a sample reads <10 millipolarization units (mP) above the mean negative control, the sample is considered negative. If a sample reads >20 mP above the mean negative control, the sample is considered positive. Samples that read between 10 and 20 mP above the negative control mean should be retested using 20 microliters of sample. If the 20-microliter sample is >20 mP above the mean negative control, the sample is considered positive. If the 20-microliter sample is still in the 10 to 20 mP range above the mean negative control, the sample is considered suspect. If the 20-microliter sample is <10 mP above the mean negative control, the sample is considered negative. Cattle and bison negative to the FP assay are classified as brucellosis negative. Cattle and bison with positive FP assay results are classified as brucellosis reactors, while cattle and bison with suspect FP assay results are classified as brucellosis suspects.

* * * * *

(b) * * *

(5) *Fluorescence polarization assay (FP assay).* An automated serologic test to determine the brucellosis status of

test-eligible swine when conducted according to instructions approved by APHIS. FP assays are interpreted as either positive, negative, or suspect. A 40-microliter sample is used. If a sample reads <10 millipolarization units (mP) above the mean negative control, the sample is considered negative. If a sample reads >20 mP above the mean negative control, the sample is considered positive. Samples that read between 10 and 20 mP above the negative control mean must be retested using 40 microliters of sample. If the 40-microliter sample is >20 mP above the mean negative control, the sample is considered positive. If the 40-microliter sample is still in the 10 to 20 mP range above the mean negative control, the sample is considered suspect. If the 40-microliter sample is <10 mP above the mean negative control, the sample is considered negative. Swine with negative FP assay results are classified as brucellosis negative. Swine with positive FP assay results are classified as brucellosis reactors, while swine with suspect FP assay results are classified as brucellosis suspects.

(6) The evaluation of test results for all swine shall be the responsibility of a designated epidemiologist in each State. The designated epidemiologist shall consider the animal and herd history and other epidemiologic factors when determining the brucellosis classification of swine. Deviations from the brucellosis classification criteria as provided in this definition of official test are acceptable when made by the designated epidemiologist.

* * * * *

Done in Washington, DC, this 29th day of October 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–24646 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 74

Material Control and Accounting of Special Nuclear Material

CFR Correction

In Title 10 of the Code of Federal Regulations, Parts 51 to 199, revised as of January 1, 2004, in part 74, at the beginning of page 466, the following text is reinstated:

§ 74.7 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

§ 74.8 Information collection requirements: OMB approval.

(a) The Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information if it does not display a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0123.

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.31, 74.33, 74.41, 74.43, 74.45, 74.51, 74.57, and 74.59.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 74.15, DOE/NRC Form–741 is approved under Control No. 3150–0003.

(2) In § 74.13, DOE/NRC Form–742 is approved under Control No. 3150–0004.

(3) In § 74.13, DOE/NRC Form–742C is approved under Control No. 3150–0058.

(4) In § 74.17, NRC Form 327 is approved under Control No. 3150–0139.

[50 FR 7579, Feb. 25, 1985, as amended at 52 FR 10040, Mar. 30, 1987; 52 FR 19305, May 22, 1987; 56 FR 55998, Oct. 31, 1991; 62 FR 52189, Oct. 6, 1997; 67 FR 78144, Dec. 23, 2002]

Subpart B—General Reporting and Recordkeeping Requirements

§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. The requirement to report within 1 hour of discovery does not pertain to measured quantities of special nuclear material disposed of as discards or inventory difference quantities. Each licensee who operates an uranium enrichment facility shall notify the NRC Operations Center within 1 hour of discovery of any unauthorized production of enriched uranium. For centrifuge enrichment facilities the requirement to report enrichment levels greater than

[FR Doc. 04–55523 Filed 11–3–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[No. 2004–51]

RIN 1550–AB95

Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The Office of Thrift Supervision (OTS) last adjusted its CMP statutes in 2000. Consequently, OTS is issuing this final rule to implement the required adjustments to OTS's CMP statutes.

DATES: Effective November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990[1] (FCPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers.[2] Under the

[1] 28 U.S.C. 2461 note.

[2] Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers this statute is making identical adjustments.

FCPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 2000.[3] OTS's civil money penalty adjustment regulation is 12 CFR 509.103. An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amounts, all of OTS's CMP statutes provide only for a daily maximum amount per violation. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as caps.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a ''cost-of-living'' adjustment. The ''cost-of-living'' adjustment is the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. Under Section 3 of the statute, the CPI is the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.

The statute contains specific rules for rounding any increase.[4] Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to adjust a maximum CMP, or the methods used to determine the adjustment.

II. Summary of Calculation

To explain the inflation adjustment calculation, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted in 2000 under 12 CFR 509.103, OTS may impose a daily maximum third-tier CMP not to exceed $1,175,000 for violations of certain banking laws.

First, we determine the appropriate CPI–Us. The statute requires OTS to use the CPI–U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2004, we use the CPI–U for June 2003, which was 183.7. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 2000, we use the CPI–U for June 2000, which was 172.4.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 2003 (183.7) by the CPI–U for June 2000 (172.4). Our result is 1.065 (*i.e.*, a 6.6% increase).

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,175,000 multiplied by the inflation factor of 1.065 equals $1,251,375.

Fourth, we round the raw inflation amounts according to the rounding rules in sec. 5(a) of the FCPIAA. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $76,375 (*i.e.*, $1,251,375 less $1,175,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,175,000 plus $75,000 yields a maximum inflation adjusted penalty amount of $1,250,000. [5]

III. Need for an Immediately Effective Final Rule

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.[6] Similarly, to issue a rule that is immediately effective, the agency must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act.[7] Moreover, sec. 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[8] requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the very specific formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2004. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. OTS is unable to vary the amounts of the adjustments to reflect any views or suggestions provided by commenters. Accordingly, OTS believes that notice and comment are unnecessary. For these same reasons, OTS believes that there is good cause to make this rule effective immediately upon publication.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[9] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Executive Order 12866

OTS has determined that this final rule does not constitute a ''significant

[3] 12 CFR 509.103; 65 FR 61260 (Oct. 17, 2000).

[4] The rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. See 28 U.S.C. 2461 note, sec. 5.

[5] Nine CMPs are subject to a slightly different treatment because the statutorily mandated computation and the rounding rules did not result in any adjustment in 2000. Eight of those penalties were last adjusted in 1996. For those eight penalties (12 U.S.C. 1464(v)(5), 12 U.S.C. 1467(d), 12 U.S.C. 1467a(r)(2), 12 U.S.C. 1817(j)(16)(A) and (B), 12 U.S.C. 1818(i)(2)(A) and (B), and 12 U.S.C. 3349(b) (first and second tier)), we compared the CPI–U for June 1996 (156.7) to the CPI–U for June 2003 (183.7), resulting in an inflation increase of 17.2%.

Moreover, because of application of the rounding rules, the $350 per violation penalty for failure to require flood insurance or notify the borrower of lack of coverage found in 42 U.S.C. 4012a(f) has never been adjusted for inflation. For that penalty, we compared the CPI–U for June of the year of enactment, 1994 (see Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, Title V, section 525, 108 Stat. 2260) (148.0) with the CPI–U for June 2003 (183.7). This resulted in an inflation increase of 24.1%. Because this is the first time these CMPs have been adjusted pursuant to the statute, the adjustment cannot exceed 10%. The adjustment to the per violation penalty in 42 U.S.C. 4012a(f) therefore is capped at $35; the resulting penalty is $385.

[6] 5 U.S.C. 553(b).

[7] *Id.*

[8] 12 U.S.C. 4802.

[9] 5 U.S.C. 603.

regulatory action'' for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

OTS had determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to sec. 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

■ Accordingly, for the reasons outlined in the preamble, OTS amends part 509 of chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Revise § 509.103(c) to read as follows:

§ 509.103 Civil money penalties.

* * * * *

(c) *Inflation adjustment.* Under the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil monetary penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after November 4, 2004:

U.S. code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition—1st Tier	$2,200.
12 U.S.C. 1464(v)(5)	Reports of Condition—2nd Tier	$27,500.
12 U.S.C. 1464(v)(6)	Reports of Condition—3rd Tier	$1,250,000.
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	$6,500.
12 U.S.C. 1467a(i)(2)	Holding Company Act Violation	$27,500.
12 U.S.C. 1467a(i)(3)	Holding Company Act Violation	$27,500.
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports—1st Tier	$2,200.
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports—2nd Tier	$27,500.
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports—3rd Tier	$1,250,000.
12 U.S.C. 1817(j)(16)(A)	Change in Control—1st Tier	$6,500.
12 U.S.C. 1817(j)(16)(B)	Change in Control—2nd Tier	$32,500.
12 U.S.C. 1817(j)(16)(C)	Change in Control—3rd Tier	$1,250,000.
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice—1st Tier	$6,500.
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice—2nd Tier	$32,500.
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice—3rd Tier	$1,250,000.
12 U.S.C. 1884	Violation of Security Rules	$110.
12 U.S.C. 3349(b)	Appraisals Violation—1st Tier	$6,500.
12 U.S.C. 3349(b)	Appraisals Violation—2nd Tier	$32,500.
12 U.S.C. 3349(b)	Appraisals Violation—3rd Tier	$1,250,000.
42 U.S.C. 4012a(f)	Flood Insurance	$385 (per 4012a(f) violation). $125,000 (per calendar year).

Dated: October 29, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–24674 Filed 11–3–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD; Amendment 39–13849; AD 2004–22–21]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all GROB–WERKE (GROB) Model G120A airplanes. This AD requires you to repetitively inspect visually the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack; repair any disbonding/crack found; and calculate weight and balance after any repair. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

DATES: This AD becomes effective on December 27, 2004.

As of December 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18030.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which

is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that a routine inspection of a Model G120A–I airplane found disbonding/cracking in the area between the vertical stabilizer main spar and nearby vertical stabilizer skin near the VOR (very high frequency omni directional range) antenna. A fleet-wide inspection of the Model G120A-I airplane fleet found one other Model G120A–I airplane with disbonding/cracking in the same area. The most likely reason for the disbonding/cracking was an incorrectly installed antenna support bracket, which caused permanent tension on the bonding seam. This resulted in disbonding/cracking in the area near the VOR antenna.

What is the potential impact if FAA took no action? Any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all GROB Model G120A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 15, 2004 (69 FR 42360). The NPRM proposed to require you to repetitively inspect visually the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack; repair any disbonding/crack found; and calculate weight and balance after any repair.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 6 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not applicable	$65	6 × $65 = $390

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

Labor cost	Parts cost	Total cost per airplane
20 workhours × $65 per hour = $1,300	The manufacturer covers under warranty and will supply any parts for the new U-profile assembly (antenna support bracket) consisting of part numbers: 120A–2363.02; 120A–2364; and 120A–2365.	$1,300

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–21 Grob-Werke: Amendment 39–13849; Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 27, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack along the spar/skin contact (both sides of the vertical stabilizer).	Within the next 50 hours time-in-service (TIS) after December 27, 2004 (the effective date of this AD), unless already done. Repetitively inspect thereafter at every 50 hours TIS.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB 1121–049, dated April 20, 2004. The applicable airplane maintenance manual also addresses this issue.
(2) If any disbonding/crack is found during any inspection required by paragraph (e)(1) of this AD: (i) Get a repair instruction from the manufacturer; and (ii) Follow this repair instruction. (iii) The repetitive inspections of paragraph (e)(1) of this AD are still required after any repair.	Before further flight after any inspection required by paragraph (e)(1) of this AD where any disbonding/crack is found.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004; and any repair instruction obtained from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. Obtain approval of this repair instruction through the FAA at the address specified in paragraph (f) of this AD. The applicable airplane maintenance manual also addresses this issue.
(3) Calculate weight and balance after any repair required by paragraph (e)(2) of this AD.	Before further flight after any repair required by paragraph (e0(2) of this AD.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004. The applicable airplane maintenance manual also addresses this issue.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–204, dated April 23, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–18030.

Issued in Kansas City, Missouri, on October 27, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24522 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–217–AD; Amendment 39–13843; AD 2004–22–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires installation of strap assemblies on the ceiling panels and rails that support the video monitors. For certain airplanes, this amendment requires replacement of certain plate assemblies within the ceiling panel strap assemblies with new, improved plate assemblies. This amendment also revises the applicability by adding airplanes. The actions specified by this AD are intended to prevent ceiling panels from falling into the passenger cabin area in the event of failure of

certain latch assemblies on the ceiling panels, which could result in consequent injury to the flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective December 9, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–18–07, amendment 39–11273 (64 FR 47372, August 31, 1999), which is applicable to certain Boeing Model 747–400 series airplanes, was published in the **Federal Register** on June 23, 2004 (69 FR 34969). That action proposed to continue to require installation of strap assemblies on the ceiling panels and rails that support the video monitors. For certain airplanes, that action also proposed to require replacement of certain plate assemblies within the ceiling panel strap assemblies with new, improved plate assemblies. That action also proposed to revise the applicability by adding airplanes.

Comments

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

Change to This Final Rule

The Summary section of the proposed AD inadvertantly stated that the existing AD that is being superseded, AD 99–18–07, amendment 39–11273 (64 FR 47372, August 31, 1999), is applicable to certain Boeing Model 747–400 and 747–400D series airplanes. The existing AD is applicable only to certain Boeing Model 747–400 series airplanes. The Summary section of this final rule has been changed to correctly state that the existing AD is applicabe to certain Boeing Model 747–400 series airplanes.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 346 airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 99–18–07, and retained in this AD, take approximately 9 work hours per ceiling panel, and between 18 and 126 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost between $1,366 and $9,575 per airplane. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be between $2,536 and $17,765 per airplane.

The installation of new plates that is required by this new AD will take approximately 7 work hours per ceiling panel, and between 18 and 126 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost between $1,700 and $12,200 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be between $2,870 and $20,390 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11273 (64 FR 47372, August 31, 1999), and by adding a new airworthiness directive (AD), amendment 39–13843, to read as follows:

2004–22–15 Boeing: Amendment 39–13843. Docket 2003–NM–217–AD. Supersedes AD 99–18–07, Amendment 39–11273.

Applicability: Model 747–400 and –400D series airplanes, as listed in Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ceiling panels from falling into the passenger cabin area in the event of failure of certain latch assemblies on the ceiling panels, which could result in

consequent injury to the flightcrew and passengers, accomplish the following:

Replacement of Plate Assemblies in the Ceiling Panel Strap Assemblies

(a) For airplanes on which ceiling panel strap assemblies were installed in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997; or Revision 1, dated August 6, 1998; or had plate assembly 411U5513–123 installed in production as of the effective date of this AD: Within 24 months after the effective date of this AD, replace any plate assembly having part number (P/N) 411U5513–123, with a new, improved plate assembly having P/N 411U5513–131, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003.

Installation of Ceiling Panel Strap Assemblies

(b) For airplanes on which ceiling panel strap assemblies were not installed in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997; or Revision 1, dated August 6, 1998: Within 24 months after the effective date of this AD, install strap assemblies on the ceiling panels and rails that support the video monitors in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003.

Actions Done per Previous Issue of Service Bulletin

(c) Accomplishment of the specified actions before the effective date of this AD per Boeing Alert Service Bulletin 747–25A3142, Revision 2, dated March 20, 2003, is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 99–18–07, amendment 39–11273, are approved as alternative methods of compliance with the applicable actions of this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on December 9, 2004.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24521 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19492; Directorate Identifier 2004–NM–200–AD; Amendment 39–13844; AD 2004–22–16]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV and GV–SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Model GV and GV–SP series airplanes. This AD requires a one-time general visual inspection for contact or insufficient clearance between the crew oxygen bottle/supports and any wiring harness, and related investigative and corrective actions if necessary. This AD also requires, for certain airplanes, adjusting the wiring harness to obtain a minimum clearance between the crew oxygen bottle and wiring, and applying Teflon sheeting, as applicable; and for certain other airplanes, reworking certain wiring bundles. This AD is prompted by reports of insufficient clearance between certain wiring harnesses and the crew oxygen bottle on several in-production and in-service airplanes. We are issuing this AD to prevent chafing of the electrical wires of the wiring harness against the crew oxygen bottle, which could result in electrical shorting and possible fire in the underfloor structure of the airplane.

DATES: Effective November 19, 2004.

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

We must receive comments on this AD by January 3, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

Fax: (202) 493–2251.

- 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.

For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–10, Savannah, Georgia 31402–9980. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19492; the directorate identifier for this docket is 2004–NM–200–AD.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT

street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Technical information: Gerald Avella, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: We have received reports indicating that insufficient clearance was found between certain wiring harnesses and the crew oxygen bottle on several in-production and in-service Gulfstream Model GV and GV–SP series airplanes. Interference between the wiring harness and crew oxygen bottle could cause chafing of the electrical wires of the wiring harness and consequent electrical shorting. Electrical shorting, if not prevented, could result in a fire in the underfloor structure of the airplane.

Other Related AD

On August 26, 1998, we issued AD 98–18–15, amendment 39–10731 (63 FR 46870, September 3, 1998), which addresses the same unsafe condition as this AD. AD 98–18–15 is applicable to certain other Gulfstream Model GV series airplanes (serial numbers 501 through 549 inclusive) that are not included in the applicability of this AD. That AD currently requires a one-time inspection to measure the clearance between a certain wiring harness and the crew oxygen bottle; corrective actions, if necessary; and eventual relocation of the crew oxygen bottle and rework of the lines and tubing associated with the crew and passenger oxygen bottles.

Relevant Service Information

We have reviewed the following customer bulletins:

Alert customer bulletin—	Revision level—	Date—
Gulfstream GV Alert Customer Bulletin 21 (for Model GV series airplanes)	Original	September 13, 2004.
Gulfstream G500 Alert Customer Bulletin 1 (for Model GV–SP (G500) series airplanes), including Gulfstream Drawing 1159SB59987.	Original	September 13, 2004.
	A	September 8, 2004.
Gulfstream G550 Alert Customer Bulletin 1 (for Model GV–SP (G550) series airplanes), including Gulfstream Drawing 1159SB59987.	Original	September 13, 2004.
	A	September 8, 2004.

The customer bulletins describe procedures for doing a one-time inspection of the area around the forward end of the crew oxygen bottle, including any supports, for contact or insufficient clearance with any wiring harness, and related investigative and corrective actions if necessary. The related investigative action includes inspecting the wiring for damage if the wiring harness is in contact with the crew oxygen bottle or any supports. The corrective action includes applying Teflon sheeting to the wiring harness if necessary; and contacting the manufacturer if wiring damage is found. Gulfstream GV Alert Customer Bulletin 21 also describes procedures for adjusting the wiring harness to obtain a minimum clearance of 0.250 inch between the crew oxygen bottle and wiring if necessary, and applying Teflon sheeting if necessary. Gulfstream G550 Alert Customer Bulletin 1 and Gulfstream G500 Alert Customer Bulletin 1 also describe procedures for reworking certain wiring bundles. The reworking includes the following actions:

- Adding new harness supports to the existing harness supports at stations 241, 253, and 265;
- For certain airplanes, relocating the completion center wire bundle through the new support, and for certain other airplanes, relocating wire bundle R77 ORG through the new support; and
- Inspecting any remaining harness bundles in the area around the passenger and crew oxygen bottles, and redressing any harness bundles that do not meet the minimum separation requirement of 0.500 inch.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent chafing of the electrical wires of the wiring harness against the crew oxygen bottle, which could result in electrical shorting and possible fire in the underfloor structure of the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and Customer Bulletins.''

Differences Between the AD and Customer Bulletins

In this AD, the inspections for clearance and damage to wiring specified in the Gulfstream customer bulletins are referred to as ''general visual inspections.'' We have included the definition for a general visual inspection in a note in this AD.

Although the customer bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this AD would require operators to repair those conditions according to a method approved by the FAA.

Although the customer bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19492; Directorate Identifier 2004–NM–200–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA

personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–16 Gulfstream Aerospace Corporation: Amendment 39–13844. Docket No. FAA–2004–19492; Directorate Identifier 2004–NM–200–AD.

Effective Date

(a) This AD becomes effective November 19, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Model GV series airplanes, serial numbers (S/N) 550 through 693 inclusive and 699; and Model GV–SP series airplanes, S/N 5001 through 5051 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of insufficient clearance between certain wiring harnesses and the crew oxygen bottle on several in-production and in-service airplanes. The FAA is issuing this AD to prevent chafing of the electrical wires of the wiring harness against the crew oxygen bottle, which could result in electrical shorting and possible fire in the underfloor structure of the airplane.

Compliance

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

Customer Bulletin References

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

(1) Gulfstream GV Alert Customer Bulletin 21, dated September 13, 2004 (for Model GV series airplanes);

(2) Gulfstream G500 Alert Customer Bulletin 1, dated September 13, 2004, including Gulfstream Drawing 1159SB59987, Revision A, dated September 8, 2004 (for Model GV–SP (G500) series airplanes); and

(3) Gulfstream G550 Alert Customer Bulletin 1, dated September 13, 2004, including Gulfstream Drawing 1159SB59987, Revision A, dated September 8, 2004 (for Model GV–SP (G550) series airplanes).

Inspection for Contact and Clearance

(g) For all airplanes: Within 25 flight hours after the effective date of this AD, do a one-time general visual inspection for contact or insufficient clearance between the crew oxygen bottle/supports and any wiring harness, and related investigative and corrective actions if necessary, by doing all of the actions in Part I of the applicable customer bulletin. If any damage is found during the general visual inspection required by this AD, and the customer bulletin specifies contacting Gulfstream for appropriate action: Before further flight, repair the damage according to a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

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

Adjustment of Wiring Harness

(h) For Model GV series airplanes: If the clearance between the crew oxygen bottle/supports and any wiring harness is found to be 0.250 inch or more during the inspection required by paragraph (g) of this AD, no further action is required by this AD. If the clearance between the crew oxygen bottle/supports and any wiring harness is found to be less than 0.250 inch during the inspection required by paragraph (g) of this AD, within 150 flight hours after completing paragraph (g) of this AD, adjust the wiring harness to obtain a minimum clearance of 0.250 inch between the crew oxygen bottle and wiring, and apply Teflon sheeting as applicable, in accordance with Part II of the applicable customer bulletin.

Reworking of Wiring Bundle

(i) For Model GV–SP series airplanes: Within 150 flight hours after completing paragraph (g) of this AD, rework the wiring bundle by complying with Drawing 1159SB59987, in accordance with Part II of the applicable customer bulletin.

Reporting Requirement

(j) Although the customer bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use the service information that is specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Alert customer bulletin—	Revision level—	Date—
Gulfstream GV Alert Customer Bulletin 21	Original	September 13, 2004.
Gulfstream G500 Alert Customer Bulletin 1, including Gulfstream Drawing 1159SB59987	Original	September 13, 2004.
	A	September 8, 2004.
Gulfstream G550 Alert Customer Bulletin 1, including Gulfstream Drawing 1159SB59987	Original	September 13, 2004.
	A	September 8, 2004.

The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–10, Savannah, Georgia 31402–9980. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 25, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24519 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Parts 402 and 403

Tariff of Tolls and Rules of Procedure of the Joint Tolls Review Board

CFR Correction

■ In Title 33 of the Code of Federal Regulations, Part 200 to End, revised as of July 1, 2004, page 691 contains duplicate text. The text from page 691 is removed and the following text from § 402.10 and part 403 is reinstated on page 691:

Item	Column 1 Place in Montreal-Lake Ontario	Column 2 Period after clearance date	Column 3 Amount ($) (5 locks)[1]
		(*d*) 72 hours or more but less than 96 hours	60,000
	(2) If the postponement is for 48 hours	(*a*) 48 hours or more but less than 72 hours	n/a
		(*b*) 72 hours or more but less than 80 hours	20,000
		(*c*) 80 hours or more but less than 88 hours	40,000
		(*d*) 88 hours or more but less than 96 hours	60,000
	(3) If the postponement is for 72 hours or more	(*a*) 72 hours or more but less than 96 hours	n/a

[1] Prorated on a per-lock basis.

PART 403—RULES OF PROCEDURE OF THE JOINT TOLLS REVIEW BOARD

Sec.
403.1 Purpose of the Joint Tolls Review Board. [Rule 1]
403.2 Scope of rules. [Rule 2]
403.3 Definitions. [Rule 3]
403.4 Applications. [Rule 4]
403.5 Meetings and functions of Board. [Rule 5]
403.6 Additional information. [Rule 6]
403.7 Action on applications; notices of requirements. [Rule 7]
403.8 Proceedings; stay or adjournment. [Rule 8]
403.9 Prehearings. [Rule 9]
403.10 Hearings; witnesses; affidavits. [Rule 10]
403.11 Findings and recommendations. [Rule 11]

Authority: 68 Stat. 92–96, 33 U.S.C. 981–990; Agreement between the Governments of United States and of Canada dated March 9, 1959, 10 U.S.T. 323, unless otherwise noted.

Source: 24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959, unless otherwise noted.

§ 403.1 Purpose of the Joint Tolls Review Board. [Rule 1]

The Board shall hear complaints relating to the interpretation of the St. Lawrence Seaway Tariff of Tolls or allegations of unjust discrimination arising out of the operation of the said Tariff and shall conduct such other business as agreed to by the Board (Rule 1).

[47 FR 13805, Apr. 1, 1982]

§ 403.2 Scope of rules. [Rule 2]

These rules govern practice and procedure before the Joint Tolls Review Board unless the Board directs or permits a departure therefrom in any proceeding [Rule 2].

(68 Stat. 92–97, 33 U.S.C. 981–990, as amended; Agreement between the Governments of the United States and Canada finalized on March 20, 1978)

[43 FR 30539, July 17, 1978. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.3 Definitions. [Rule 3]

In these rules, unless the context otherwise requires:

(a) *Application* includes complaint;

(b) *Affidavit* includes a written affirmation;

(c) *Board* means the Joint Tolls Review Board;

(d) Words in the singular include the plural and words in the plural include the singular [Rule 3].

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959, as amended at 43 FR 30539, July 17, 1978. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.4 Applications. [Rule 4]

(a) Every proceeding before the Board shall be commenced by an application made to it, which shall be in writing and signed by, or on behalf of, the applicant.

(b) An applicant shall file six copies of his application setting forth a clear and complete statement of the facts the grounds for the complaint, and the relief

or remedy to which the applicant claims to be entitled.

(c) Applicants resident in Canada shall file their complaints with the St. Lawrence Seaway Joint Tolls Reviews Board, Tower ''A'', Place de Ville, 320 Queen Street, Ottawa, Ontario KIR 5A3. Applicants resident in the United States of America shall file their complaints with the St. Lawrence Seaway Joint Tolls Review Board, 800 Independence Ave., SW., Washington, D.C. 20591. Other applicants may file their

[FR Doc. 04–55524 Filed 11–3–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA155–5081a; FRL–7834–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve reasonable available control technology (RACT) to limit nitrogen oxides (NO_X) emissions from two individual sources located in Fairfax County, Virginia, namely, the Central Intelligence Agency, and the National Reconnaissance Office. In the direct final rule published on September 9, 2004 (69 FR 54574), we stated that if we received adverse comment by October 12, 2004, the rule would be withdrawn and not take effect. EPA received adverse comments on October 12, 2004. EPA will address the comments received in a subsequent final action based upon the proposed action also published on September 9, 2004 (69 FR 54600). EPA will not institute a second comment period on this action.

DATES: The Direct final rule is withdrawn as of November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 29, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

■ For the reasons set forth in the preamble, EPA withdraws the revision of the entries for the Central Intelligence Agency, CIA, George Bush Center for Intelligence; and the National Reconnaissance Office, Boeing Service Center in § 52.2420(d) published at 69 FR 54578 (September 9, 2004).

[FR Doc. 04–24656 Filed 11–3–04; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 69, No. 213
Thursday, November 4, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19527; Directorate Identifier 2004–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4 605R Variant F Airplanes (Collectively Called A300–600)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4 605R Variant F airplanes (collectively called A300–600). This proposed AD would require relocating contactor 9DG located at rack (relay box) 107VU and adding protective sleeves to the two wire (cable) looms near the door hinge of rack 107VU. This proposed AD is prompted by reports that interference was noticed during production between the wire looms located near the door hinge of rack 107VU and the terminals of contactor 9DG. We are proposing this AD to prevent possible short circuits in the wire looms supplying the fuel pump systems and the pitot probe heating system, which could lead to a possible loss of function of flight-critical systems and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 6, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- 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.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19527; Directorate Identifier 2004–NM–71–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4 605R Variant F airplanes (collectively called A300–

600). The DGAC advises that it has received reports that interference was noticed during production between two wire (cable) looms located near the door hinge of rack (relay box) 107VU and the terminals of contactor 9DG located at rack 107VU. This condition could also be present on any airplane that has embodied in service any revision of Airbus Service Bulletin A310–30–2030 or Service Bulletin A300–30–6017. This condition, if not corrected, could result in short circuits in the wire looms supplying the fuel pump systems and the pitot probe heating system, which could lead to a possible loss of function and reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A310–24–2087 (for Model A310 series airplanes); and Service Bulletin A300–24–6081 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4 605R Variant F airplanes (collectively called A300–600)); both Revision 01, both dated December 18, 2003. The service bulletins describe procedures for relocating contactor 9DG and adding protective sleeves to the two wire looms located near the door hinge of rack 107VU. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2003–412, dated November 12, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 167 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $290 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $80,995, or $485 per airplane.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19527; Directorate Identifier 2004–NM–71–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 6, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310 series airplanes, as listed in Airbus Service Bulletin A310–24–2087, Revision 01, dated December 18, 2003; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4 605R Variant F airplanes (collectively called A300–600), as listed in Airbus Service Bulletin A300–24–6081, Revision 01, dated December 18, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that interference was noticed during production between two wire (cable) looms located near the door hinge of rack (relay box) 107VU and the terminals of contactor 9DG located at rack 107VU. We are issuing this AD to prevent possible short circuits in the wire looms supplying the fuel pump systems and the pitot probe heating system, which could lead to a possible loss of function and reduced controllability of the airplane.

Compliance

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

Relocation of Contactor and Addition of Protective Sleeves

(f) Within 12 months after the effective date of this AD, relocate contactor 9DG located at rack 107VU and add protective sleeves to the two wire looms located at the door hinge of rack 107VU, by doing all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–24–2087, Revision 01 (for Model A310 series airplanes); or Service Bulletin A300–24–6081, Revision 01 (for Model A300–600 series airplanes); both dated December 18, 2003; as applicable.

Actions Accomplished per Previous Issue of Service Bulletins

(g) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–24–2087; or Airbus Service Bulletin A300–24–6081; both dated June 7, 2002; are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2003–412, dated November 12, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24633 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19526; Directorate Identifier 2004–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–135BJ series airplanes. This proposed AD would require modifying the electrical wiring for the ''stick pusher'' system. This proposed AD is prompted by a report that the stick pushers are not being inhibited when the AP/PUSH/TRIM switches are activated, which can result in reduced controllability of the airplane if there is a system malfunction. We are proposing this AD to prevent reduced controllability of the airplane if the stick pusher system malfunctions.

DATES: We must receive comments on this proposed AD by December 6, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- 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.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19526; Directorate Identifier 2004–NM–140–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135BJ series airplanes. The DAC advises that the ''stick pushers'' are not inhibited when the AP/PUSH/TRIM switches are activated. The switches are installed on the control wheels for the pilot and co-pilot. The stick pushers are part of the stall protection system and are automatically activated when an airplane approaches a stall condition. If the stick pushers cannot be inhibited, the workload for the pilot and co-pilot is increased because they have to exert additional physical force against the control wheels to control the airplane. Malfunction of the stick pusher system could result in reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–27–0009, dated March 1, 2004. The service bulletin describes procedures for modifying the electrical wiring for the stick pusher system. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2004–04–02, dated May 6, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require modifying the electrical wiring for the stick pusher system. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	2	$65	$7	$137	7	$959

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2004–19526; Directorate Identifier 2004–NM–140–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 6, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ series airplanes, serial numbers 145462, 145495, 145505, 145528, 145625, 145637, and 145642; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the stick pushers are not being inhibited when the AP/PUSH/TRIM switches are activated, which can result in reduced controllability of the airplane if there is a system malfunction. We are issuing this AD to prevent reduced controllability of the airplane if the stick pusher system malfunctions.

Compliance

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

Modification of Electrical Wiring

(f) Within 400 flight hours or 180 calendar days after the effective date of this AD, whichever is first: Modify the wiring for the stick pusher system by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–27–0009, dated March 1, 2004.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Brazilian airworthiness directive 2004–04–02, dated May 6, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24632 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19525; Directorate Identifier 2004–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –200ER, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 777–200, –200ER, and –300 series airplanes. This proposed AD would require inspection of the outer cylinder of the main landing gear (MLG) to determine the serial number; an ultrasonic inspection of the outer cylinder of the MLG for cracks if necessary; and applicable specified and corrective actions if necessary. This proposed AD is prompted by reports indicating that two outer cylinders were found fractured in the weld area. We are proposing this AD to detect and correct cracks or defects that could result in a fracture of the outer cylinder of the

MLG, which could lead to collapse of the MLG during landing.

DATES: We must receive comments on this proposed AD by December 20, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19525; Directorate Identifier 2004–NM–18–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports indicating that two outer cylinders of the main landing gear (MLG) were found fractured in the weld area while at the supplier, before delivery to Boeing for installation on Boeing Model 777–200 series airplanes. The outer cylinder of the MLG is a two-piece design, which is welded together on the main barrel. Investigation revealed that the fractured outer cylinders were cleaned with an unapproved cleaning solution before welding. The cleaning solution that was used contained small amounts of oil that may have contaminated the bonding surfaces of the weld, which could cause cracks or defects in the weld. These conditions, if not detected and corrected, could result in a fracture of the outer cylinder of the MLG, which could lead to collapse of the MLG during landing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–32A0038, Revision 1, dated February 19, 2004. The service bulletin describes procedures for an ultrasonic inspection for cracks or defects of the outer cylinder of the MLG, applicable specified actions, and corrective actions if necessary. Applicable specified actions may involve jacking up the airplane to remove the MLG, and disassembling the MLG to remove the outer cylinder for the ultrasonic inspection. Corrective actions involve replacing the outer cylinder of the MLG with a new MLG whose part identification numbers are not listed in the service bulletin. The service bulletin also recommends reporting the inspection results to Boeing. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require inspection of the outer cylinder of the MLG to determine the serial number; an ultrasonic inspection of the outer cylinder of the MLG for cracks if necessary; and applicable specified and corrective actions as necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.'' The proposed AD would also require that operators send the results of their ultrasonic inspection findings to the FAA only if the inspection finds any crack.

Differences Between the Proposed AD and the Service Bulletin

Unlike the effectivity of the service bulletin, this proposed AD would affect Boeing Model 777–200ER and –300 series airplanes in addition to Model 777–200 series airplanes listed in the service bulletin. We have determined

that, because of the potential for the affected outer cylinders to be installed on all these models, the proposed actions must be done on all of these airplanes to address the identified unsafe condition.

In addition, we have determined that the service bulletin does not completely address the rotability of the affected parts. Therefore, this proposed AD would also require a one-time inspection to determine if a suspect serial number of an outer cylinder may be installed on airplanes other than those listed in the effectivity of the service bulletin.

The service bulletin specifies a compliance time of 8,000 flight cycles or when the outer cylinder is 6 years old, whichever occurs first. We have determined that a grace period of 4,000 flight cycles or 750 days after the effective date of the AD, whichever occurs first, is necessary to prevent unnecessary grounding of airplanes that are over the threshold specified in the service bulletin.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a report of all ultrasonic inspection results to the manufacturer, this proposed AD would require submitting the inspection report to the FAA only if the inspection finds any crack. We need further information on the extent of the quality control (QC) problem. When the unsafe condition addressed by an AD is likely due to a manufacturer's QC problem, a reporting requirement is instrumental in ensuring that we can gather as much information as possible regarding the extent and nature of the QC problem or breakdown, especially in cases where such data may not be available through other established means. This information is necessary to ensure that we can apply knowledge and lessons learned from these inspections to future MLG actions. The differences discussed in ''Differences Between the Proposed AD and the Service Bulletin'' have been coordinated with Boeing.

Costs of Compliance

This proposed AD would affect about 463 Model 777 series airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part Number Inspection.	1 to 229 (depending on which inspection method is used).	$65	None	$65 to $14,885	133	$8,645 to $1,979,705.
Ultrasonic Inspection (if necessary).	6	65	None	$390 per outer cylinder, $780 for both outer cylinders on the airplane.	Unknown, there may be up to 26 affected outer cylinders in fleet.	$10,140.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19525; Directorate Identifier 2004–NM–18–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777–200, –200ER, –300 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that two outer cylinders of the main landing gear (MLG) were found fractured in the weld area. We are issuing this AD to detect and correct cracks or defects that could result in a fracture of the outer cylinder of the MLG, which could lead to collapse of the MLG during landing.

Compliance

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

Service Bulletin References

(f) The term ''the service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 777–32A0038, Revision 1, dated February 19, 2004.

Compliance Time

(g) Perform the applicable actions specified in paragraph (h) of this AD at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Within 4,000 flight cycles or 750 days after the effective date of this AD, whichever occurs first; or

(2) Before accumulation of 8,000 total flight cycles on the outer cylinder or 72 months on the outer cylinder since new, whichever occurs first.

Part Identification Inspection, Ultrasonic Inspection, and Corrective Action

(h) Inspect the outer cylinder of the MLG to determine whether an outer cylinder having a serial number (S/N) listed in paragraph 1.D., ''Description,'' of the service bulletin is installed. Instead of an inspection of the outer cylinder of the MLG, a review of airplane maintenance records is acceptable if the S/N of the outer cylinder can be positively determined from that review.

(1) If no S/N identified in the service bulletin is installed, no further action is required by this paragraph.

(2) If any S/N identified in the service bulletin is installed, before further flight, do an ultrasonic inspection of the outer cylinder of the MLG for cracks, all applicable specified actions, and any corrective actions per the service bulletin. Do any applicable corrective action before further flight.

Reporting a Crack

(i) Submit a report of any crack is found during the inspection required by paragraph (h)(2) of this AD to the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the outer cylinder serial number and part number, and the number of landings and flight hours on the outer cylinder. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install an outer cylinder having a S/N listed in paragraph 1.D., ''Description,'' of the service bulletin on any airplane unless it has been inspected and all specified and corrective actions are accomplished in accordance with paragraph (h)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any action required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24631 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. 2000N–1409]

Medical Devices; Revision of the Identification of the Iontophoresis Device; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposed rule the agency issued in the **Federal Register** of August 22, 2000 (65 FR 50949) (the August 2000 proposed rule). In that document, FDA proposed to amend the physical medicine devices regulations to remove the class III (premarket approval) iontophoresis device identification. In response to the comments received on the proposed rule, FDA is withdrawing the proposed rule and considering and other courses of action. Elsewhere in this issue of the **Federal Register**, FDA is announcing an opportunity to submit information and comments concerning FDA's intent to initiate a proceeding to reclassify those iontophoresis devices currently in class III into class II (special controls).

DATES: The proposed rule is withdrawn on November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 23, 1983 (48 FR 53032), FDA issued a final rule classifying the iontophoresis device into class II (performance standards before the Safe Medical Devices Act of 1990 and now special controls) and class III (premarket approval), depending on its intended use. An iontophoresis device is a device that is intended to use a direct current to introduce ions of soluble salts or other drugs into the body and induce sweating for diagnostic or other uses. If the iontophoresis device is intended for use in the diagnosis of cystic fibrosis or another intended use and the labeling of the drug intended for use with the device bears adequate directions for the device's use with that drug, the device is categorized as class II. An iontophoresis device that is intended to introduce ions of soluble salts or other drugs into the body for other purposes is categorized as class III.

In the August 2000 proposed rule, FDA proposed regulations to amend the physical medicine devices regulations to remove the class III (premarket approval) iontophoresis device identification. FDA proposed this action because it believed that there were no preamendments iontophoresis devices marketed for uses other than those described in the class II identification. FDA expected that manufacturers of those devices currently in class III would be able to relabel their devices to meet the class II identification.

II. Withdrawal of the Proposed Rule

FDA received substantial comment in response to the August 2000 proposed rule. Several comments disagreed with FDA's assertion that no class III preamendments iontophoresis devices existed. In response to these comments, FDA is considering other courses of action and is withdrawing the August 2000 proposed rule.

III. Alternative Action

Elsewhere in this issue of the **Federal Register**, FDA is providing interested persons with an opportunity to submit new information concerning the safety and effectiveness of the iontophoresis device. After FDA reviews any information that it receives in response to this notice, the agency will decide whether it should go forward with a reclassification of those iontophoresis devices currently in class III and whether a panel meeting is necessary before taking any action.

Dated: October 25, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–24590 Filed 11–3–04; 8:45 am]

BILLING CODE 4160–01–S

Notices

Federal Register

Vol. 69, No. 213

Thursday, November 4, 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

Submission for OMB Review; Comment Request

October 29, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Aquaculture Risk Management Survey.

OMB Control Number: 0563–NEW.

Summary of Collection: The Agricultural Risk Protection Act of 2000 (Pub. L. 106–224) requires the Risk Management Agency (RMA) to increase the availability of risk management tools to underserved commodities. Aquaculture production in the U.S. utilizes different aquatic environments (warm and cold, fresh and salt water) and types of growing systems (pond culture, flow and net pens). Aquaculture operations are located in every State; however, production is concentrated in catfish, trout, salmon and baitfish. RMA will develop a one-time survey that will aid them in the development for a risk management profile of aquaculture producers.

Need and Use of the Information: RMA will use the results from the survey to determine how a crop insurance program may be designed or adapted to meet the needs of aquaculture producers. The information collected also would provide guidance in the design of insurance programs. If the survey were not conducted, the development of risk management programs for aquaculture producers would be compromised.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 2,200.

Frequency of Responses: Reporting: Other (One-Time).

Total Burden Hours: 1,247.

Title: Grass Seed Feasibility Study.

OMB Control Number: 0563–NEW.

Summary of Collection: The Agricultural Risk Protection Act of 2000 (Pub. L. 106–224) directed the Risk Management Agency (RMA) of the U.S. Department of Agriculture to carry out research and development for purposes of increasing participation in crop insurance by producers of underserved agricultural commodities (section 522(c)). Because grass seed is one of these underserved commodities, many producers lack access to crop insurance. In the past, many grass seed producers have received disaster payments through the Noninsured Crop Disaster Assistance Program.

Need and Use of the Information: The information collected in this study will make it possible to determine the feasibility for providing crop insurance to producers of this crop. RMA will use this information to assess the frequency and severity of changes in the volume and value of production to determine the probability distribution of these severities across tree farms producing these crops. If this information were not collected, it would not be possible to develop an actuarial profile of the industry, a requirement for judging the feasibility of designing and implementing a crop insurance program for grass seed producers.

Description of Respondents: Individuals or households; Farms; Business or other for-profit.

Number of Respondents: 4,889.

Frequency of Responses: Recordkeeping; Reporting: Other (One-Time).

Total Burden Hours: 1,611.

Title: Christmas Tree Crop Insurance Survey.

OMB Control Number: 0563–NEW.

Summary of Collection: The Agricultural Risk Protection Act of 2000 (Pub L. 106–224) directed the Risk Management Agency (RMA) of the U.S. Department of Agriculture to carry out research and development for purposes of increasing participation in crop insurance by producers of underserved agricultural commodities (section 522(c)). Christmas tree production is one of several crops for which crop insurance is not available. They are grown in all 50 states on as many as 1 million acres. The production of Christmas trees is an intensive agriculture-forestry enterprise that requires practices and techniques much like those required for any other crop.

Need and Use of the Information: The information collected in this study will make it possible to determine the price elections and premium rate levels for providing crop insurance to producers of this crop. RMA will use this information to assess the frequency and severity of changes in the volume and value of production and to determine the probability distribution of these severities across tree farms producing these crops.

Description of Respondents: Individuals or households; Farms; Business or other for-profit.

Number of Respondents: 876.

Frequency of Responses: Reporting: Other (One-Time).

Total Burden Hours: 986.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–24605 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–116–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our 13th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held from Wednesday, April 6, through Friday, April 8, 2005, from 1 p.m. to approximately 5 p.m. on Wednesday, 8:30 a.m. to approximately 5 p.m. on Thursday, and from 8:30 a.m. to approximately noon on Friday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Mr. Steven A. Karli, Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov.* For registration information, contact Ms. Nicole Ruffcorn at the same address and fax number; phone (515) 232–5785 extension 127; or e-mail *Nicole.L.Ruffcorn@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held 12 public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the 13th such meeting, which will be held April 6 through April 8, 2005.

The agenda for the meeting is not yet complete. Topics that have been suggested include: (1) Autogenous biologics and their role in the treatment/prevention of disease; (2) transmissible spongiform encephalopathies and their impact on veterinary biologics production; (3) current Center for Veterinary Biologics activities; (4) updates on regulatory initiatives; and (5) novel vaccine technologies. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, distribution, and regulation of products for the diagnosis, prevention, and treatment of diseases of animals.

Please submit suggested meeting topics and proposed presentation titles to Mr. Steven A. Karli (*see* **FOR FURTHER INFORMATION CONTACT** above) on or before December 6, 2004. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the agenda topics in the **Federal Register**.

Done in Washington, DC, this 1st day of November 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–3008 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 04–031C]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Correction.

SUMMARY: The Food Safety and Inspection Service published a document in the **Federal Register** on October 22, 2004, concerning Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods. Correction: In the **Federal Register** of October 22, 2004, Volume 69, Number 204, on page 62017, in the first paragraph and **SUMMARY**, the following sentence should have appeared: ''Persons from State and Federal governments, industry, consumer groups, and academia, as well as all other interested persons, are invited to submit nominations''. Please note that ''consumer groups'' and ''all other interested parties'' had been inadvertently omitted from the sentence that originally appeared. The Agency is publishing this corrected notice and will accept nominations 30 calendar days from the date of the publication of this corrected notice.

This corrected notice announces that the U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). Nominations for membership are being sought from individuals with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), risk assessment, infectious disease, biostatistics, and other related sciences. Persons from State and Federal governments, industry, consumer groups, and academia, as well as all other interested persons, are invited to submit nominations. Members who are not Federal government employees will be appointed to serve as non-compensated special government employees (SGEs). SGEs will be subject to appropriate conflict of interest statutes and standards of ethical conduct.

DATES: The nominee's typed resume or curriculum vitae must be received by December 4, 2004.

ADDRESSES: Nominations should be sent to Ms. Karen Thomas, Advisory Committee Specialist, USDA, Food Safety and Inspection Service, Room 333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Thomas, Advisory Committee Specialist, at the above address or by telephone 202–690–6620 or FAX 202–690–6634.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological

Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.'' The current charter for the NACMCF and other information about the Committee are available for viewing on the NACMCF home page at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp*.

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the Committee take into account the needs of the diverse groups served by the Department. Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Given the complexity of issues, the full Committee expects to meet at least once yearly, and the meetings will be announced in the **Federal Register**. The subcommittees will meet as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update available on-line at *http://www.fsis.usda.gov.* NACMCF holds subcommittee working group meetings in order to accomplish the work of NACMCF; all work accomplished by the subcommittees is reviewed and approved by the full Committee during a public meeting of the full Committee, as announced in the **Federal Register**. The subcommittee may invite technical experts to present information for consideration by the subcommittee. All data and records available to the full Committee are expected to be available to the public at the time the full Committee reviews and approves the work of the subcommittee.

Appointment to the Advisory Committee is a two-year term; renewable for a total of three consecutive terms. Members must be prepared to work outside of scheduled Committee and subcommittee meetings, and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel reimbursement and per diem are available.

Regarding Nominees Who Are Selected

All nominees who are selected must submit a USDA Advisory Committee Membership Background Information form AD–755, available on-line at: *http://www.fsis.usda.gov/FSISForms/AD–755.pdf.*

In particular to their appointment, SGEs must complete the Office of Government Ethics (OGE) 450 Confidential Financial Disclosure Report, as new entrants before rendering any advice, or prior to their first meeting. All members will be reviewed for conflict of interest pursuant to 18 U.S.C. 208 in relation to specific NACMCF work charges. Financial disclosure updates will be required of members before each meeting. Members must report any changes in financial holdings requiring additional disclosure. OGE 450 forms are available on-line at: *http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/forms/fr450fill_03.pdf.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it both on-line through the FSIS Web page located at *http://www.fsis.usda.gov* and the NACMCF Web page at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC, on: October 29, 2004.

Richard Van Blargan,

Acting Administrator.

[FR Doc. 04–24602 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Official Barley Protein Measurement

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing its intent to provide official protein content measurement for barley using an Artificial Neural Network (ANN) calibration on the official near-infrared transmittance (NIRT) instruments. GIPSA will provide protein content measurement in barley as official criteria under the authority of the United States Grain Standards Act (USGSA).

EFFECTIVE DATE: July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Steven N. Tanner, Director, Technical Services Division, GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, Missouri 64153; telephone (816) 891–0401; fax (816) 891–0478.

SUPPLEMENTARY INFORMATION: GIPSA's official inspection system has not previously offered an official test for barley protein content. Recently developed state-of-the-art Artificial Neural Network (ANN) calibration development techniques, allow for wheat and barley protein content to be determined with a greater degree of accuracy than was possible with more limited calibration approaches. GIPSA will begin using an ANN calibration for official wheat protein content measurement in May 2005 (69 FR 52645).

The barley protein content testing service will be available, upon request of an interested person, as official criteria for barley, under the authority of the USGSA, as amended.

Therefore, to better facilitate the marketing of barley, and provide official barley protein testing to producers and other interested parties on a voluntary basis, GIPSA is establishing a new official criteria, available upon request, to determine the protein content of barley. GIPSA believes offering this service will facilitate the marketing of malting barley, by providing a fair, accurate and transparent third party

determination, backed by a national quality control process, and standardized instrumentation, reference samples, calibrations and procedures. As part of GIPSA's on-going efforts to evaluate calibrations and programs, GIPSA has thoroughly evaluated the accuracy of the ANN calibration. ANN-related information may be found on GIPSA's Web site at: *http://www.usda.gov/gipsa.*

Based on its evaluation, GIPSA has decided to implement the new ANN barley protein calibration on official NIRT instruments on July 1, 2005.

Authority: 7 U.S.C. 71 *et seq.*

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–24647 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for renewal information collection relating to existing nutrition education and training materials targeting low-income persons. This voluntary form gives Food Stamp nutrition education providers the opportunity to share resources that they have developed or used.

DATES: Comments on this notice must be received by January 10, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Shannon Fries, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351, telephone (301) 504–5368 or fax (301) 504–6409.

Submit electronic comments to *sfries@nal.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Number: PRA# 0518–0031.

Expiration Date: Three years from date of approval.

Type of Request: Renewal of existing data collection from Food Stamp nutrition education providers.

Abstract: This voluntary ''Sharing Form'' gives Food Stamp nutrition education providers the opportunity to share information about resources that they have developed or used. Data collected using this form helps the Food and Nutrition Information Center (FNIC) identify existing nutrition education and training resources for review and inclusion in an online database. Educators can search this database via the Food Stamp Nutrition Connection Web site *http://www.nal.usda.gov/foodstamp/.* In 2001, the United States Department of Agriculture's (USDA) Food and Nutrition Service established the Food Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. Educators nationwide can use this site to identify curricula, lesson plans, research, training tools and participant materials. Developed and maintained at the National Agricultural Library's FNIC, this resource system helps educators find the tools and information they need to provide quality nutrition education for low-income audiences.

The Sharing Form is available for completion online at the Food Stamp Nutrition Connection Web site. Individuals may also print and return it via fax or mail. The form consists of four parts. These various sections include: Part 1 consisting of three questions about the responder; Part 2 with nine questions about the resource; Part 3 with five questions about the resource development; and Part 4 with six questions about ordering/obtaining the resource. Responders are asked to complete only relevant sections of the form. Instructions about which sections to complete, based on one's relationship to the resource, are provided in Part 1. For instance, those that use the resource but are neither its developer or distributor would only complete Parts 1 and 2.

This form enables FNIC to inform nutrition educators of existing nutrition education and training materials targeting low-income Americans. This identification of existing materials will help educators spend their monies wisely in the development of needed educational resources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.7 minutes per response.

Respondents: Food stamp nutrition education providers.

Estimated Number of Respondents: 50 per year.

Estimated Total Annual Burden on Respondents: 16 hrs.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance for the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: October 12, 2004.

Edward B. Knipling,

Administrator, ARS.

[FR Doc. 04–24603 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Poinsett Watershed, Craighead and Poinsett Counties, AR

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102 (2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650), Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for Segment No. 7 of Main Ditch, Poinsett Watershed, Craighead and Poinsett Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West

Capitol Avenue, Little Rock, Arkansas 72201–3225.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of this project is to provide flood control. The planned works of improvement include four miles of channel improvement for Segment No. 7 of the Main Ditch south of Jonesboro, Arkansas in the Poinsett Watershed.

A limited number of copies of the FONSI are available at the above address to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David Weeks, Assistant State Conservationist Natural Resource Planning, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: October 15, 2004.

Kalven L. Trice,

State Conservationist.

Finding of No Significant Impact for Segment No. 7 of the Main Ditch Poinsett Watershed; Craighead and Poinsett Counties, Arkansas

Poinsett Watershed is a federally assisted action authorized under Pub. L. 83–566, Watershed Protection and Flood Prevention Act of 1954, as amended. The original Poinsett Watershed Work Plan was prepared in February 1968. The primary purpose of the plan is to provide flood reduction to the agricultural lands subject to flood damages. The plan was prepared by the local sponsoring organizations with technical assistance from the Natural Resources Conservation Service (NRCS). The Supplemental Watershed Plan No. 4 was prepared to add Segment No. 7 of the Main Ditch to the Plan. The Environmental Assessment (EA) was prepared to update and review items that are of concern with channel improvement for Segment No. 7 of the Main Ditch considering the present rules and regulations.

This particular action involves only the channel improvement of Segment No. 7 of the Poinsett Watershed. Federal assistance will be provided under authority of the Pub. L. 83–566, Watershed Protection and Flood Prevention Act of 1954, as amended. The EA was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals.

Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225.

The drainage area at the downstream end of the Segment No. 7 is 20.6 square miles. The project area is located in northeastern Arkansas in Craighead and Poinsett Counties. The southern limit of the city of Jonesboro is located in the northern most part of the watershed. The watershed land use of Segment No. 7 is about 30 percent (%) urban, 40% cropland, and 30% pasture, range, and woods.

Local Sponsoring organizations are Poinsett Watershed Improvement District, Craighead County Conservation District, and Poinsett County Conservation District.

Alternatives

Alternative 1 is the No Action or Future Without Project. This alternative consists of maintaining the existing channel capacity of Segment No. 7 of the Main Ditch. No Federal funds would be spent on Segment No. 7. Flood damages to agricultural areas, infrastructure, and residential area in the floodplain would continue at the present level.

Alternative 2 is the Channel Improvement of Segment No. 7. This alternative consists of improving the existing channel from station 1328+00 to 1542+60, two rock chutes to stabilize grade, and 33 grade stabilization structures to drop water from the field or drains into the ditch improvement. This alternative will meet the need and purpose of the project to provide flood protection benefits to the agricultural land along Segment No. 7, infrastructure in the project area, and residences in the southern part of Jonesboro.

Recommended Action

Alternative 2 is the recommended alternative and consists of channel improvement of Segment No. 7 of the Main Ditch to provide for flood prevention benefits. This alternative provides the most net benefits and is the National Economic Development (NED) Plan.

Effects of Recommended Action

Benefits of Recommended Action

The estimated total average annual monetary benefits will be $94,220. The average annual cost is $78,000, resulting in a benefit to cost ratio of 1.2 to 1.0.

Impacts of Recommended Action

Floodwater Impact

The existing channel has inadequate capacity to protect cropland and other agricultural lands from flooding by moving floodwaters from Jonesboro through the agricultural areas. The average annual area flooded within Segment No. 7 evaluation reach is approximately 1770 acres. Channel improvement of Segment No. 7 would reduce flood damages to agricultural lands, infrastructure, and other private lands. The average annual area flooded would be reduced by 1,470 acres.

Archeological and Historical Impact

Requirements of Section 106 of the National Historic Preservation Act of 1966 as amended were fully implemented. Planning activities for the protection and preservation of historic properties have been conducted in compliance with Section 106 and Section 110 (f) and (k) of the National Historic Preservation Act. Processes consistent with the Advisory Council on Historic Preservation regulations (36 CFR 800) have been followed by NRCS. No known cultural resources were identified. NRCS will take action to protect and/or recover any historic properties discovered during construction.

Fish and Wildlife Resources Impact

The land use on both sides of the ditch is open cropland with the exception of two small wooded areas. The open cropland affords food for seed-eating birds and provides some ground cover. Water within the ditch is very shallow and unshaded. Some species of fish such as sunfish, carp, buffalo, and catfish may use the ditch at various times. However, fishery habitats are very low quality and are of very little value as a fishery resource.

The channel improvement will have minor short-term impact on the existing fishery habitats. Reduction in flooding depth and duration in the floodplain will improve the upland wildlife habitats on agricultural land.

Threatened and Endangered Species Impact

The endangered fat pocketbook *Potamilus copax* (mussel) occurs within Craighead County, Arkansas. However, the U.S. Fish and Wildlife Service has determined that this endangered species is not located within the project area (USFWS, 2004). The project will have no adverse impacts to any threatened and endangered species.

Prime Farmland

Presently, there are 4,005 acres of prime farmland in the project area. Prime farmland will be impacted by reduced frequency and depth of flooding on 1,209 acres. Enlargement of the planned channel will result in a loss of 78 acres of prime farmland adjacent to the existing ditch. Overall there will be a positive impact on prime farmland due to a reduction in flooding.

Wetlands Impact

The land use on both sides of the ditch is open cropland with the exception of two small wooded areas. The wooded area located at approximately from channel station 1369+00 to station 1381+00 has some minor wetlands. These are located greater than 90 feet from the centerline of the existing channel.

Construction methods will be used to avoid any adverse impacts. The channel will be constructed from both sides with spoil placed approximately equally on both sides of the ditch except at the location from channel station 1369+00 to station 1381+00. At that location construction methods will be used to limit fill on the side where the wooded area is located. Constructed channel dimensions on the wooded area side will not

extend past 90 feet with limited fill on that side to maintain existing wetlands and spoil elevations. Using these construction methods, there will be no adverse impacts to the minor wetlands within the wooded area.

Environmental Values Changed or Lost

Disturbed areas will be planted to permanent grasses.

Resource	Impact
Land use changes	No impact.
Floodplains	Positive impact by reducing flood damages.
Fish and Wildlife Habitats	Minor short-term adverse impacts on these habitats.
Threatened and Endangered Species	No adverse impact on threatened and endangered species.
Wetlands	No impact on wetlands.
Cultural Resources	No impact.
Prime Farmland	Positive impact by reducing flooding on prime farmland.

Irreversible and Irretrievable Commitment of Resources

Construction, operation, and maintenance of the channel improvement of Segment No. 7 of the Main Ditch will require irretrievable commitments of energy, material, and financial resources, as typical for similar projects.

Consultation and Public Participation

Project Sponsors

Original local sponsoring organizations (sponsors) are the Poinsett Watershed Improvement District, Craighead Conservation District, and Poinsett Conservation District. At the initiation of the planning process, meetings were held with representatives of the sponsors to ascertain their watershed concerns and project purposes. Meetings with the sponsors were held throughout the planning process.

Planning Team

An Interdisciplinary Planning Team provided for the technical administration of this project. Examples of tasks completed by the Planning Team include, but are not limited to, preliminary investigations, hydrologic and engineering analysis, economic analysis, formulating and evaluating alternatives, and writing the Supplemental Watershed Plan and EA. Informal discussions among the planning team, sponsors, NRCS, and landowners were conducted throughout the planning period.

Input From Agencies and Groups

Twenty-eight letters were sent to Federal, State, and local agencies requesting information available and concerns on Poinsett Watershed, Segment No. 7 of the Main Ditch. A meeting and field tour with agencies were held on May 5, 2004, to assess proposed measures and their potential impact on resources of concern. Eleven Federal, State, and local agencies were invited to participate. The following agencies participated in this field review:

- Arkansas Department of Environmental Quality;
- USDA–NRCS State, Area, Project, and Field levels;
- Poinsett Watershed Improvement District.

Other agencies invited but not attending included the U.S. Fish and Wildlife Service (FWS), U.S. Army Corps of Engineers, and Environmental Protection Agency (EPA).

Public Participation

A public meeting was held on April 14, 2004, to explain the proposed channel improvement and to scope resource problems, issues, and concerns of local residents associated with the Poinsett Watershed, Segment No. 7 of the Main Ditch. Notice of the public meeting was posted and published in the local newspaper over three consecutive weeks. In addition, a letter of notice of meeting and comment forms were mailed to potentially affected landowners around Segment No. 7 of the Main Ditch. The meeting participants provided verbal and written comment on issues and concerns to be considered in the planning process.

A coordination meeting with project sponsors and NRCS was held on June 10, 2004, to summarize planning accomplishments, convey results of the hydraulic analysis, and present various channel improvement alternatives. Consensus was reached on the layout and configuration of the Channel Improvement Alternative. A follow-up meeting was conducted with the sponsors, officials with the city of Jonesboro, and Craighead County on August 31, 2004.

A Final Draft was distributed on July 21, 2004, for interagency and public review to appropriate local, state, and federal agencies and other interested groups. The availability of Final Draft was publicized in the local newspaper. The Final Draft was distributed to the following agencies and groups for review and comment.

Local Groups and Agencies

Poinsett County Watershed Improvement District, Craighead County Conservation District, Poinsett County Conservation District, Mayor, City of Jonesboro, and Craighead County Judge.

Federal Agencies

U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, Memphis District, USDA Forest Service, Southern Region, USDA/Farm Service Agency, USDA/Rural Development, USDA/FSA, and Federal Highway Administration.

State Agencies

Governor's Office, State Clearinghouse, Arkansas Soil and Water Conservation Commission, Arkansas Game and Fish Commission, AR Department of Health, AR Department of Parks and Tourism, AR Waterways Commission, AR Forestry Commission, AR Natural Heritage Commission, Arkansas Department of Environmental Quality, AR Department of Economic Development, AR Highway & Transportation Dept., Natural Resources Leasing, Arkansas Geological Commission, Arkansas Department of Emergency Management, and Arkansas Water Resources Research Center.

Environmental Organizations

Wildlife Management Institute, Arkansas Wildlife Federation, National Audubon Society, and National Wildlife Federation.

After a 45-day review period, comments were incorporated into the Final Supplemental Watershed Plan and EA.

Determination of Significance

Table 1 displays a summary of comparison of the environmental impacts on important resource concerns.

TABLE 1.—SUMMARY COMPARISON OF IMPACTS ON IMPORTANT RESOURCE CONCERNS

Effects	Alternative No. 1 No action	Alternative No. 2 Channel improvement (NED)
Structural	Maintain Segment No. 7 channel at existing flow capacity.	Improve channel of Segment No. 7 to required flow capacity.
Project Investment	$0	$1,292,480.
National Economic Development		
Beneficial Annual	$0	$94,226.

TABLE 1.—SUMMARY COMPARISON OF IMPACTS ON IMPORTANT RESOURCE CONCERNS—Continued

Effects	Alternative No. 1 No action	Alternative No. 2 Channel improvement (NED)
Adverse Annual	$0	$78,000.
Net Beneficial	$0	$16,226.
Environmental Quality Account		
Threatened and Endangered Species	No impact	No impact.
Streams, Lakes, and Wetlands	No impact	No impact.
Prime Farmland	No impact	Reduce flooding on 1209 acres.
Fish and Wildlife Habitats	Adversely impacted	No impact.
Water Quality	Increase in stream turbidity	Short term decrease in water quality during construction and improvement of water quality long term.
Sedimentation	No impact	No significant long term impact.
Other Social Effects		
Average Annual Flood damages	Increase in average annual acres flooded above existing 1990 acres and in flood damages to infrastructure and residences.	Flood protection to agricultural lands by reducing average annual area flooded by 1,385 acres, reduce flood damages to infrastructure and residences.
Cultural and Historic Resources	No impact	No impact.
Land Use and Floodplain Management	Land use might change as increased flooding decreases land productivity.	No change to land use and improvement to land management decisions.
Transportation and Access	Increased flooding of five roads and one bridge located downstream.	Transportation access would be maintained and improved.
Regional Economic Development Account (Positive Effects/Negative Effects Annualized)		
Region	$0/$0	$0/$27,300.
Nation	$0/$0	$94,226/$50,700.

Conclusion

The purpose of the improvement to Segment No. 7 of the Main Ditch is to provide flood prevention benefits to the agricultural lands, infrastructure, and residential area along Segment No. 7. The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. I find that neither the proposed action nor any of the alternatives is a major Federal action significantly affecting the quality of the human environment. Therefore, based on above findings, I have determined that an Environmental Impact Statement for Segment No. 7 of the Main Ditch, Poinsett Watershed is not required.

Dated: October 15, 2004.

Kalven L. Trice,

State Conservationist.

[FR Doc. 04–24546 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5174 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784, FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and 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: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5068, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Public Television Station Digital Transition Grant Program.

OMB Control Number: 0572–0134.

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

Abstract: As part of the nation's evolution to digital television, the Federal Communications Commission had ordered all television broadcasters

to initiate the broadcast of a digital television signal. Public television stations rely largely on community financial support to operate. In many rural areas the cost of the transition to digital broadcasting may exceed community resources. Since rural communities depend on public television stations for services ranging from educational course content in their schools to local news, weather, and agricultural reports, any disruption of public television broadcasting would be detrimental.

Initiating a digital broadcast requires the installation of a new antenna, transmitter or translator, and new digital program management facilities consisting of processing and storage systems. Public television stations use a combination of transmitters and translators to serve the rural public. If the public television station is to perform program origination functions, as most do, digital cameras, editing and mastering systems are required. A new studio-to-tower site communications link may be required to transport the digital broadcast signal to each transmitter and translator. The capability to broadcast some programming in a high definition television format is inherent in the digital television standard, and this can require additional facilities at the studio. These are the new components of the digital transition.

In designing the national competition for the distribution of these grant funds, priority is given to public television stations serving the areas that would be most unable to fund the digital transition without a grant. The largest sources of funding for public television stations are public membership and business contributions. In rural areas, lower population density reduces the field of membership, and rural areas have fewer businesses per capita than urban and suburban areas. Therefore, rurality is a primary predictor of the need for grant funding for a public television station's digital transition. In addition, some rural areas have per capita income levels that are lower than the national average, and public television stations covering these areas in particular are likely to have difficulty funding the digital transition. As a result, the consideration of the per capita income of a public television station's coverage area is a secondary predictor of the need for grant funding. Finally, some public television stations may face special difficulty accomplishing the transition, and a third scoring factor for station hardship will account for conditions that make these public television stations less likely to accomplish the digital transition without a grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.12.

Estimated Total Annual Burden on Respondents: 1,168 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–4120

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: October 29, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–24604 Filed 11–3–04; 8:45 am]

BILLING CODE 3410–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: Tuesday, November 16, 2004, at 7 p.m. local time.

PLACE: North West Georgia Trade and Convention Center, Lecture Hall Theater, 2211 Dug Gap Battle Road, Dalton, Georgia, (Telephone No. 1–800–824–7469).

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) is convening a community meeting in connection with its investigation of a toxic gas release that occurred on April 12, 2004, at the MFG Chemical Inc. facility located in Dalton, Georgia.

At the meeting CSB staff will present their preliminary investigative findings to the Board, including a summary of the incident. There will also be a panel discussion consisting of five emergency response organizations. After the staff presentations the Board will allow time for public comment.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in the incident. Factual analyses, conclusions, or findings contained in the staff presentations should not be considered final.

This meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least five (5) business days prior to the meeting.

CONTACT PERSON FOR MORE INFORMATION: Daniel Horowitz, (202) 261–7600.

Dated: November 1, 2004.

Christopher W. Warner,

General Counsel.

[FR Doc. 04–24701 Filed 11–2–04; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2004]

Foreign-Trade Zone 15—Kansas City, MO, Application for Subzone, Pfizer, Inc. (Pharmaceutical Products)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Kansas City Foreign Trade Zone, Inc., grantee of FTZ 15, requesting special-purpose subzone status for the manufacturing facilities of Pfizer, Inc. (Pfizer), in the Lee's Summit, Missouri, area, within the Kansas City Missouri Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 29, 2004.

Pfizer's plant (104 acres) is located at One Pfizer Way, Lee's Summit, Jackson County, Missouri. The facility (approximately 235 employees) is used for the manufacture, processing, warehousing and distribution of pharmaceuticals, as well as for research and development activities. Pfizer will use zone procedures at the Lee's Summit plant to manufacture Revolution (TM), (HTSUS 3004.90.9103), a topical parasiticide for dogs and cats. The activity related to the manufacture of Revolution (TM) involves the use of the foreign-sourced chemicals butylated hydroxytoluene (HTSUS 2907.19.8000), hydroxylamine (HTSUS 2928.00.5000), and selamectin (HTSUS 2932.29.5050), two of which are processed at Pfizer's Groton, Connecticut facility, prior to shipment to the Lee's Summit facility. A subzone application is currently pending with the FTZ Board for Pfizer's Groton facility (Docket 45–2004). Foreign-sourced chemicals will account for most of the material value of the finished product.

Zone procedures used at Lee's Summit would exempt Pfizer from Customs duty payments on foreign

input when used in production for export (some 33 percent of production). Pfizer expects that export sales will grow to account for 50 percent of production in the near future. On domestic sales, Pfizer would be able to choose the lower duty rate (duty free) that applies to the finished product, rather than the duty rate on the foreign-sourced chemicals listed above, which are dutiable at rates from 3.7 to 6.5 percent. The request indicates that the savings from utilizing FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is January 3, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 18, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 2345 Grand Boulevard, Suite 650, Kansas City, MO 64108.

Dated: October 29, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–24654 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

Background

On August 22, 2003, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Turkey, covering the period July 1, 2002, to June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750. On March 17, 2004, the Department fully extended the preliminary results of the aforementioned review by 120 days. *See Certain Pasta from Italy and Turkey: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews*, 69 FR12641. On August 6, 2004, the Department published the preliminary results of its review. *See Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47876. The final results of this review are currently due no later than December 6, 2004.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to fully consider parties' arguments regarding the proposed modifications to the wheat codes and rejection of untimely submissions. Therefore, we are extending the deadline for the final results of the above-referenced review until February 2, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3010 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the

time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

Background

On August 22, 2003, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2002, to June 30, 2003 (68 FR 50750). On March 17, 2004, the Department fully extended the preliminary results of the review by 120 days (69 FR 12641). On August 6, 2004, the Department published the preliminary results of its review (69 FR 47880). The final results of this review are currently due no later than December 6, 2004.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to fully consider parties' arguments regarding the application of facts available with respect to Barilla Alimentare, S.p.A., and certain respondents' proposed modifications to the wheat codes. Therefore, we are extending the deadline for the final results of the above-referenced review until February 2, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 29, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3011 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Polychloroprene Rubber From Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the expedited sunset review of the antidumping duty finding: polychoroprene rubber from Japan.

SUMMARY: On July 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty finding on certain polychloroprene rubber from Japan.[1] On the basis of the notice of intent to participate and substantive comments filed on behalf of the domestic interested party, and inadequate response (in this case waiver of participation) from respondent interested parties, the Department determined to conduct an expedited sunset review of the antidumping duty finding pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (''the Act'') and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.[2] As a result of this sunset review, the Department determined that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review''.

EFFECTIVE DATE: November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department initiated a sunset review of the antidumping duty finding on polychloroprene rubber from Japan in accordance with section 751(c) of the Act. *See Notice of Initiation,* 69 FR 39905 (July 1, 2004).

The Department received a Notice of Intent to Participate within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf of DuPont Dow Elastomers L.L.C. (''DDE'').[3] DDE claimed interested party status as a domestic producer of polychloroprene rubber from Japan.

The Department received complete substantive responses from the domestic interested party within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, the Department did not receive adequate responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this antidumping duty finding.

Scope of the Antidumping Duty Finding

Imports covered by this sunset review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the Harmonized Tariff Schedule (''HTS''). The HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty finding were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''November 2004''. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/producers/exporter's	Weighted-average margin (percent)
Denki Kaguku Kogyo K.K	0.00
Denki Kaguku Kogyo, K.K./Hoei Sangyo Co., Ltd	55.00
Suzugo Corporation	55.00
All Others	55.00

[1] *See Initiation of Five-Year (''Sunset'') Reviews,* 69 FR 39905 (July 1, 2004) (''*Notice of Initiation*'').

[2] The Department received a statement of waiver of participation of the five-year sunset review from Showa Denko L.L. (''SDK''). *See* letter to James J. Jochum, Assistant Secretary for Import Administration, July 30, 2004.

[3] DDE stated that it succeeds E.I. DuPont De Nemours & Company (''DuPont''), Petitioner in this antidumping proceeding. DuPont was the original Petitioner in the original investigation of polychloroprene rubber from Japan.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3014 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium; Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Stainless steel plate in coils from Belgium.

SUMMARY: On April 1, 2004, the Department initiated a sunset review of the countervailing duty (''CVD'') order on stainless steel plate in coils (''SSPC'') from Belgium pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See* Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidies at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

Department's Regulations

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998).

Background

On April 1, 2004, the Department initiated a sunset review of the CVD order on SSPC from Belgium pursuant to section 751(c) of the Act. *See* Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). On April 16, 2004, the Department received a notice of intent to participate from Allegheny Ludlum Corp. (''Allegheny Ludlum''), North America Stainless (''NAS''), and the United Steelworkers of America, AFL-CIO/CLC (''USWA''), (collectively, ''domestic interested parties'') within the applicable deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. *See* Response of the Domestic Interested Parties at 2, May 3, 2004 (''Domestic Response''). All domestic interested parties claimed interested-party status, under sections 771(9)(C) and (D) of the Act, as a U.S. producer of the domestic like product or a certified union whose workers are engaged in the production of the subject merchandise in the United States. *See* Domestic Response. The USWA was a petitioner in the investigation and has been involved in this proceeding since its inception. *Id.* at 6. Armo, Inc., J&L Specialty Steels, Inc., and Lukens Inc. were also petitioners in the original investigation but are either no longer producers of subject merchandise or are scheduled to cease production of SSPC this year. *Id.* According to the domestic interested parties in this review, two unions, Butler Armco Independent Union and Zanesville Armco Independent Organization, that were original petitioners are not participating in this sunset review because very few workers at these unions are engaged in the production of SSPC in the United States. *Id.* at 7. The domestic interested parties have participated as a group at various segments of this order. *Id.*

The Department received a waiver of participation from U & A Belgium, a respondent interested party. *See* Response of U & A Belgium, ''SSPC from Belgium—Sunset Participation Waiver'' (April 30, 2004). We did receive substantive responses from the Government of Flanders and the Government of Belgium (collectively, ''GOB'') and the Delegation of the European Commission (''EU''). *See* Substantive Response of the GOB, (''GOB Response'') (May 3, 2004) and the Substantive Response of the EU (''EU Response'') (April 30, 2004). In addition, the GOB and the domestic industry submitted rebuttals on May 10, 2004. *See* Rebuttal of the Domestic Interested Parties (''Domestic Rebuttal'') (May 10, 2004) and GOB Rebuttal (May 10, 2004).

As a result of the lack of respondent company participation in this sunset review, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order. *See* Memorandum to Ronald K. Lorentzen, Acting Office of Policy Director, from Kelly Parkhill, Director of Industry and Support, Sunset Review of Stainless Steel Plate in Coils from Belgium: Adequacy of Respondent Interested Party Responses to the Notice of Initiations (May 19, 2004).

Scope of Review

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc. provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has

been annealed and pickled after this cold reduction process. The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 28, 2004, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of countervailable subsidies and the net subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''November 2004.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order on SSPC from Belgium would be likely to lead to continuation or recurrence of countervailable subsidies at the rate listed below:

Producers/exporters	Net countervailable subsidy (percent)
Ugine and ALZ Belgium	1.13
All Others	1.13

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3009 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request Under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

October 29, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain twill rayon/nylon/spandex warp stretch fabric, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 31, 2004 the Chairman of CITA received a petition from Mast Industries, Inc. alleging that certain twill rayon/nylon/spandex warp stretch fabric, of specifications detailed below, classified in subheading 5516.22.0040 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On August 31, 2004, the Chairman of CITA received a petition from Mast Industries, Inc. alleging that certain twill rayon/nylon/spandex warp stretch fabric, of specifications detailed below, classified in HTSUS subheading 5516.22.0040, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

HTSUS Sub-heading:	5516.22.0040

Fiber Content:	77% staple rayon/ 20% filament nylon/ 3% filament spandex
Weight:	245 g/m2
Construction:	2 X 1 twill weave
Thread Count:	39.4 warp ends per centimeter and 29.9 filling picks per centimeter
Yarn Number:	Warp: 70 denier filament nylon yarns gimped around a core of 40 denier monofilament spandex; filling: 10/1 c.c. staple rayon yarn

On September 8, 2004, CITA solicited public comments regarding this petition (69 FR 54269), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On September 24, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

The petitioner emphasized that domestic mills do not have the processing capabilities or equipment to manufacture warp stretch woven fabrics. CITA found that there is domestic capacity to weave, dye and finish the subject fabric. A variety of stretch fabric programs are currently being manufactured in the United States. CITA concluded that the domestic industry is capable of supplying the subject fabric in commercial quantities in a timely manner.

Based on the information provided, including review of the petition, public comments and advice received, and our knowledge of the industry, CITA has determined that certain twill rayon/ nylon/spandex warp stretch fabric, described above, classified in HTSUS subheading 5516.22.0040, for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Mast Industries' request is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3013 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

October 29, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain woven fabrics, of the specifications detailed below, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 24, 2004 the Chairman of CITA received a petition from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On August 24, 2004, the Chairman of CITA received a petition from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric 1	**Fancy polyester/rayon blend suiting fabric**
HTS Subheading:	5515.11.00.05
Fiber Content:	65% polyester/35% rayon
Width:	58/59 inches
Construction:	Made on the worsted wool system with two-ply combed and ring spun yarns in the warp and fill
Dyeing:	Yarns are made from dyed fibers
Fabric 2	**Fancy polyester/rayon blend suiting fabric**
HTS Subheading:	5515.11.00.05
Fiber Content:	65% polyester/35% rayon
Width:	58/59 inches
Construction:	Made on the synthetic system with two-ply carded and ring spun yarns in the warp and fill
Dyeing:	Yarns are made from dyed fibers

On August 31, 2004, CITA solicited public comments regarding this petition (69 FR 53047), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On September 16, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the

relevant Industry Trade Advisory Committees.

CITA found that there are several domestic manufacturers with the ability to weave the subject fabrics. There was a general concern expressed about the sourcing of the required rayon staple fibers. However, rayon fiber can be sourced worldwide and be used in qualifying U.S. formed fabric for preferential treatment under the CBTPA.

Based on the information provided, including review of the petition, public comments and advice received, and our knowledge of the industry, CITA has determined that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Sharretts, Paley, Carter & Blauvelt's request is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3012 Filed 11–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Environmental Impact Statement for the Construction and the Operation of a Battle Area Complex and a Combined Arms Collective Training Facility Within U.S. Army Training Lands in Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Army announces the availability of a Draft Environmental Impact Statement (DEIS) for the construction and operation of a co-located Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF) within U.S. Army training lands in Alaska, and the execution of routine, joint military training at these locations. The purpose of the proposed project is to provide a year-round, fully automated, multi-purpose, and realistic training facility for U.S. Army, Alaska and other units. The DEIS analyzes the proposed action's impacts upon Alaska's natural and man-made environments. The Army prepared this DEIS in compliance with the National Environmental Policy Act (NEPA).

DATES: Written comments on the DEIS are invited during the 45-day public comment period, which begins on the date the U.S. Environmental Protection Agency publishes notice of receipt of the DEIS in the **Federal Register.**

ADDRESSES: Written comments should be directed to: Mr. Kevin Gardner, Directorate of Public Works, 730 Quartermaster Road, Attention: APVR–RPW–EV (GARDNER), Fort Richardson, AK 99505–6500; facsimile: (907) 384–3047; e-mail: *kevin.gardner@richardson.army.mil.*

FOR FURTHER INFORMATION CONTACT: Major Dan Hunter, Public Affairs Officer, 600 Richardson Drive, #5600, ATTN: APVR–RPV–O (HUNTER), Fort Richardson, AK 99505–5600; telephone: (907) 384–3306; facsimile: (907) 384–2060; e-mail: *robert.hunter@richardson.army.mil.*

SUPPLEMENTARY INFORMATION: U.S. Army, Alaska (USARAK) proposes to construct and to operate a state-of-the-art, fully automated and instrumented combat training facility. This involves the construction and operation of a co-located BAX (rural environment) and CACTF (urban environment). The BAC and CACTF require approximately 3,500 and 800 acres of land suitable for the construction and operation of these ranges, respectively. In addition, a surface danger zone is associated with both, brining the total required area to approximately 30,000 acres.

The purpose of the proposed action is to provide year-round, fully automated, comprehensive, and realistic training and range facilities, which, in combination, would support company (200 soldiers) through battalion (800 soldiers) combat team training events. The construction and operation of a co-located BAX and CACTF would support required higher levels of realistic combat training in both urban and rural environments. Automated facilities will be used to provide timely feedback that is critical to effective training.

The BAX and CACTF would fully train soldiers for war by maintaining unit readiness and availability in recognition of the threats facing our nation and the world today. The BAX would support company combat team live-fire operations on a fully automated rural maneuver range and would provide for joint combined arms team training with other Department of Defense organizations. The CACTF would support battalion combat team training and joint operations in an urban environment.

Tribes, Federal, state, and local agencies and the public were invited to participate in the scoping process for the preparation of this DEIS. The primary issues analyzed in the DEIS include the result of public scoping. These issues are: Soil resources; wildlife and fisheries; cultural resources; surface water (particularly local flooding events); fire management; noise; and human health and safety. These issues have been analyzed based on the following proposed alternative courses of action: (1) No Action (maintain existing range infrastructure and do not construct a BAX and a CACTF); (2) Construction and operation of a BAX and a CACTF within Eddy Drop Zone; (3) Construction and operation of a BAX and a CACTF within Donnelly Drop Zone; and (4) Construction and operation of a BAX and a CACTF within North Texas Range. These three alternative sites are located in Donnelly Training Area, East, which is adjacent to Fort Greely, Alaska.

Copies of the DEIS are available for review at the following locations: Noel Wien Public Library, 1215 Cowles Street, Fairbanks, AK; Delta Junction Public Library, Deborah Street, Delta Junction, AK; Donnelly Training Area Natural Resources Office, Building T100, Room 201, Fort Greely, AK; and Fort Wainwright Environmental Resources Department, Building 3023, Fort Wainwright, AK. A copy of the DEIS may be obtained at the following Web site: *http://www.usarak.army.mil/conservation*, or by contacting Major Dan Hunter (listed above).

Comments on the DEIS, received during the 45-day public comment period, will be considered in preparing the Final Environmental Impact Statement. The Army will hold public meetings to solicit comments on the DEIS. Notification of the dates, times and locations for the meetings will be published in local newspapers.

John M. Brown III,

Lieutenant General, USA, Commanding General, U.S. Army, Pacific.

[FR Doc. 04–24637 Filed 11–13–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report for the Port of Los Angeles Channel Deepening Project Additional Disposal Capacity; Los Angeles County, CA

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent/notice of preparation.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is currently constructing the Channel Deepening Project. Disposal sites developed for the Channel Deepening Project have proven to be inadequate to provide disposal capacity for all sediments that require removal as part of the Channel Deepening Project. In addition, as identified in the project Feasibility Study, various berths located throughout the Port of Los Angeles (POLA) require dredging in order to accommodate deeper draft vessels that the Channel Deepening Project will allow to navigate the Main Channel.

DATES: A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on November 30, 2004, at 6 p.m.

ADDRESSES: The meeting location is in the Bannings Landing Community Center; 100 East Water Street; Wilmington, CA 90748. Telephone: (310) 522–2015.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Larry Smith, U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RN, P.O. Box 532711, Los Angeles, CA 90053–2325; phone (213) 452–3846; or E-mail: *lawrence.j.smith@spl.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authorization:* The study was authorized by the Water Resources Development Act of 2000.

2. *Background:* The Supplemental Environmental Impact Statement/ Supplemental Environmental Impact Report (SEIS/SEIR) supplements the Port of Los Angeles Channel Deepening Project SEIS/SEIR (SEPT 2000) that supplemented the Deep Draft Navigation Improvements, Los Angeles and Long Beach Harbors, San Pedro Bay, California Environmental Impact Statement/Environmental Impact Report (SEPT 1992) and the Channel Deepening Project Port of Los Angeles Environmental Impact Report (JAN 1998).

3. *Proposed Action:* The Corps is currently constructing the Channel Deepening Project. Disposal sites developed for the Channel Deepening Project have proven to be inadequate to provide disposal capacity for all sediments that require removal as part of the Channel Deepening Project. In addition, as identified in the project Feasibility Study, various berths located throughout the POLA require dredging in order to accommodate deeper draft vessels that the Channel Deepening Project will allow to navigate the Main Channel. The following plan has been identified to provide additional disposal capacity and to mitigate impacts: (1) Expand the Pier 300 expansion site by up to 40 acres; (2) mitigate for loss of eelgrass by building an eelgrass restoration site of approximately 20 acres in the Seaplane Lagoon or Seaplane Anchorage; (3) expand the Cabrillo Shallow Water Habitat by approximately 35 acres to mitigate for loss of shallow water habitat; (4) cap the Consolidated Slip; and (5) construct a 15-acre land area within the existing Cabrillo shallow water habitat at the San Pedro Breakwater for future use as a migratory bird nesting area.

4. *Alternatives:* Alternative disposal sites being considered are: (1) No action; (2) offshore disposal at LA–2 of suitable fine-grained materials that have no beneficial use; (3) disposal in the Pier 400 submerged material storage site reducing water depth from—15′ MLLW to–12′ MLLW; (4) disposal in the Pier 400 submerged material storage site creating up to 40 acres of new land; (5) fill two existing slips at Berths 243–245; (6) disposal in the West Channel from an existing depth of—30 to–35′ MLLW to–15′ MLLW or (7) fill the northwest slip located in the West Basin between Berths 129–136. A combination of sites may be selected based on dredge material volume, and potential impacts from the use of each disposal site. The proposed plan, viable project alternatives, and the ''no action'' plan will be carried forward for detailed analysis pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, as amended) and the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, Sections 21000–21177).

5. *Scoping Process:* a. Potential impacts associated with the proposed action will be fully evaluated. Resource categories that will be analyzed are: Biology, air quality, water quality, cultural resources, land use, geology, recreational, aesthetics, ground and vessel transportation, noise, public health and safety, and utilities.

b. The Corps and the POLA are preparing a joint SEIS/SEIR to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with NEPA for the project, and the POLA is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft SEIS/ SEIR (DSEIS/SEIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DSEIS/SEIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final SEIS/SEIR (FSEIS/SEIR) will address the comments received on the DSEIS/SEIR during public review, and will be furnished to all who commented on the DSEIS/SEIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal SEIS, preparing a Record of Decision (ROD) and, for the state SEIR, certifying the SEIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FSEIS/SEIR. The ROD can be published immediately after the FSEIS public comment period ends. A certified SEIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA.

c. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the scoping meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, historical photos of the area, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist along the Main Channel and San Pedro Bay. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information to Mr. Larry Smith before December 13, 2004. Requests to be placed on the mailing list for announcements and the DSEIS/SEIR should also be sent to Mr. Larry Smith.

Dated: October 28, 2004.

John V. Guenther,

Lieutenant Colonel, US Army, Acting District Engineer.

[FR Doc. 04–24639 Filed 11–3–04; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

Name of the Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: November 19, 2004.

Location: Adam's Mark Buffalo/ Niagera Hotel, 120 Church Street, Buffalo, New York 14202 (716) 845–5100.

Time: 9 a.m. to 12 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Edwards, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: 202–761–1934.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The EAB will visit the Buffalo area prior to the meeting to gain a better perspective of the water resources issues and challenges in the region. The public meeting will, however, focus on general issues of national significance rather than on individual project or region related topics. The intent of this meeting is to present an opportunity for the Chief of Engineers to receive the views of his EAB. Time will be provided for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–24636 Filed 11–3–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: December 7, 2004.

Location: St. Louis Airport Marriott, 10700 Peartree Lane, St. Louis, MO 63134, (1–314–423–9700).

Time: Registration will begin at 8:30 am and the meeting is scheduled to adjourn at 1 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also begin consideration of its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CEMP–POD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–1934.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested persons may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–24638 Filed 11–3–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 04–83–NG, 04–79–NG, 04–85–NG, 04–84–NG, 04–83–NG, 04–86–NG, 04–88–NG, 04–90–NG, 04–89–NG, 04–91–NG, and 01–44–LNG]

Office of Fossil Energy; San Diego Gas & Electric Company, Select Energy New York, Inc., BP Canada Energy Marketing Corp., Merrill Lynch Commodities, Inc., San Diego Gas & Electric Company, Glendale Water and Power, Cook Inlet Energy Supply L.L.C., Coenergy Trading Company, Premstar Energy Canada LP, United Energy Trading, LLC, Itochu Petroleum Japan Ltd.; Orders Granting, Amending, and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during September 2004, it issued Orders granting, amending, and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 28, 2004.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix—Orders Granting, Amending, and Vacating Import/Export Authorizations

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2014	9–03–04	San Diego Gas & Electric Company 04–83–NG.	73 Bcf	.....	Import natural gas from Canada, beginning on December 1, 2004, and extending through November 30, 2006.
2015	9–07–04	Select Energy New York, Inc. 04–79–NG.	15 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 7, 2004, and extending through September 6, 2006.
2016	9–14–04	BP Canada Energy Marketing Corp. 04–85–NG.	500 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 24, 2004, and extending through September 23, 2006.
2017	9–15–04	Merrill Lynch Commodities, Inc. 04–84–NG.	800 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 1, 2004, and extending through September 30, 2006.
2014	9–21–04	San Diego Gas & Electric Company 04–83–NG.	.....	.....	Errata: Term of the authority was stated as beginning on December 1, 2004, amended to change the term as beginning on December 1, 2003.
2018	9–24–04	Glendale Water and Power 04–86–NG.	3.8 Bcf	.....	Import from Canada, beginning on November 1, 2002, and extending through October 31, 2004.

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2019	9–24–04	Cook Inlet Energy Supply L.L.C. 04–88–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 20, 2004, and extending through September 19, 2006.
2020	9–24–04	CoEnergy Trading Company 04–90–NG.	150 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on September 30, 2004, and extending through September 29, 2006.
2021	9–28–04	PremStar Energy Canada LP 04–89–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 1, 2004, and extending through September 30, 2006.
2022	9–28–04	United Energy Trading LLC 04–91–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 28, 2004, and extending through September 27, 2006.

[FR Doc. 04–24649 Filed 11–3–04; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–519–001, FERC–519]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 28, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 20, 2004 (69 FR 51658–51649) and has made this indication in its submission to OMB.

DATES: Comments on the collection of information are due by November 29, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–519–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–519 ''Application for Sale, Lease or Disposition, Merger or Consolidation of Facilities or for Purchase or Acquisitions of Securities.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0082.

The Commission is now requesting that OMB review and approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b. Section 203 authorizes the Commission to grant approval of transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person or acquires the securities of another public utility. Under this statute, the Commission must find that the proposed transaction will be consistent with the public interest. Section 318 of the FPA exempts certain persons from the requirements of section 203 that would otherwise concurrently apply under the Public Utility Holding Company Act of 1935.

Under section 203 of the FPA, FERC must review proposed mergers, acquisitions and dispositions of jurisdictional facilities by public utilities, if the value of the facilities exceeds $50,000, and must approve these transactions if they are consistent with the public interest. Today, one of FERC's overarching goals is to promote competition in wholesale power markets, having determined that effective competition, as opposed to traditional forms of price regulation, can best protect the interests of ratepayers. Market power, however, can be exercised to the detriment of effective competition and customers. Therefore, FERC regulates transmission service, mergers and wholesale rates so as to prevent the exercise of market power in bulk power markets. The Commission implements these filing requirements in

the Code of Federal Regulations (CFR) under 18 CFR part 33.

5. *Respondent Description:* The respondent universe currently comprises 134 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 52,930 total hours, 134 respondents (average per year), 1 response per respondent, and 395 hours per response (average).

7. *Estimated Cost Burden to Respondents:* $6,141,456. (The Commission anticipates over the next three years that it will receive 132 ''203 applications for non-merger transactions'' at an average of $37,200 and 2 merger applications not requiring complex analysis at an average of $615,528 per application.)

Statutory Authority: Section 203 of the Federal Power Act, (18 U.S.C. 824b).

Magalie R. Salas,

Secretary.

[FR Doc. 04–24594 Filed 11–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–523–001, FERC–523]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 28, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 20, 2004 (69 FR 51651–52), and has made this indication in its submission to OMB.

DATES: Comments on the collection of information are due by November 29, 2004.

ADDRESSES: Address comments on the information collection to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–523–001.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–523 ''Applications for Authorization of Issuance of Securities.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0043.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 19, 20 and 204 of the Federal Power Act (FPA) (16 U.S.C. 792–828c). Under the FPA, a public utility or licensee must obtain Commission authorization for the issuance of securities or for the assumption of liabilities as a guarantor, indorser, or surety or otherwise in respect to any other security of another person, unless and until they have submitted an application to the Commission. After review and approval, the Commission will in turn issue an order authorizing the assumption of the liability or the issuance of securities. The information filed in applications to the Commission is used to determine the Commission's acceptance and/or rejection for granting authorizations for either the issuance of securities or the assumption of obligations or liabilities to licensees and public utilities.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 20, 34, 131.43 and 131.50.

5. *Respondent Description:* The respondent universe currently comprises 60 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 6,600 total hours, 60 respondents (average per year), 1 response(s) per respondent, and 110 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 6,600 hours / 2080 hours per years × $107,185 per year = $340,106.

Statutory Authority: Sections 19, 20 and 204 of the Federal Power Act (FPA) (16 U.S.C. 792–828c).

Magalie R. Salas,

Secretary.

[FR Doc. 04–24595 Filed 11–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–542–001, FERC–542]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 28, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 26, 2004 (69 FR 7634) and has made this indication in its submission to OMB.

DATES: Comments on the collection of information are due by November 29, 2004.

ADDRESSES: Address comments on the information collection to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–542–001.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–542 ''Gas Pipeline Rates: Rate Tracking.''
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0070.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4, 5 and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. Sections 4, 5 and 16 authorize the Commission to collect natural gas transmission cost information from interstate natural gas transporters for the purpose of verifying that these costs which are passed on to pipeline customers, are just and reasonable. Interstate natural gas pipelines are required by the Commission to track their transportation associated costs to allow for the Commission's review and where appropriate, approval of the pass through of these costs to pipeline customers. Most of the FERC–542 tracking filings are monthly accountings of the cost of fuel or electric power to operate compressor stations.

Tracking filings may be submitted at any time or on a regularly scheduled basis in accordance with the pipeline company's tariff. Filings may be either: (1) Accepted; (2) suspended and set for hearing; (3) suspended, but not set for hearing; or (4) suspended for further review, such as technical conference or some other type of Commission action. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 154, 154.4, 154.7, 154.101, 154.107, 154.201, 154.207–209 and 154.401–403.

5. *Respondent Description:* The respondent universe currently comprises 57 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 23,940 total hours, 57 respondents (average per year), 3 responses per respondent, and 140 hours per response (average).

7. *Estimated Cost Burden to respondents:* 23,940 hours/2080 hours per years × $107,185 per year = $1,233,658.

Statutory Authority: Sections 4, 5 and 16 of the Natural Gas Act (NGA), Pub. L. 75–688) (15 U.S.C. 717–717).

Magalie R. Salas,

Secretary.

[FR Doc. 04–24596 Filed 11–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–546–001, FERC–546]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 28, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for

review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 26, 2004 (69 FR 52494) and has made this indication in its submission to OMB.

DATES: Comments on the collection of information are due by November 29, 2004.

ADDRESSES: Address comments on the information collection to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–546–001.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–546 ''Certificated Rate Filings: Gas Pipeline Rates.''
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0155.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4, 5 and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and Title IV of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301–3432). The Commission has the regulatory responsibility under these Acts to ensure that pipeline rates and services are just and reasonable and not unduly discriminatory. Accordingly, jurisdictional natural gas pipeline companies are required to obtain Commission approval for all rates and charges made, or demanded, in connection with the transportation or sale of natural gas in interstate commerce.

Service and tariff revision information necessary for Commission examination and subsequent approval of any certificated pipeline *change in service* is collected under FERC–546. (Information necessary to examine and approve any *change in rates* is collected separately under FERC–542 for tracking filings (non-formal), and FERC–544 and FERC–545 for general rate change filings, including NGA Section 4 major rate filings, (formal and non-formal respectively)). The required FERC–546 information is set forth in each pipeline's tariff, and must be filed in compliance with Commission regulations found in 18 CFR 154.4; 154.7; 154.202; and 154.204–154.209; and 154.602–154.603.

5. *Respondent Description:* The respondent universe currently comprises 77 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 12,320 total hours, 77 respondents (average per year), 4 responses per respondent, and 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 12,320 hours/2080 hours per years × $107,185 per year = $634,865.

Statutory Authority: Sections 4, 5 and 16 of the Natural Gas Act (NGA), Pub. L. 75–688) (15 U.S.C. 717–717) and Title IV of the Natural Gas Policy Act (15 U.S.C. 3301–3432).

Magalie R. Salas,

Secretary.

[FR Doc. 04–24597 Filed 11–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–556–001, FERC Form–556]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 29, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 26, 2004 (69 FR 52495–96) and has made this indication in its submission to OMB.

DATES: Comments on the collection of information are due by November 30, 2004.

ADDRESSES: Address comments on the information collection to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point

of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–556–001.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 556 ''Application for Authorization of Issuance of Securities.''
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0075.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 3 of the Federal Power Act (FPA) (16 U.S.C. 792–828c) and sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The reporting requirements associated with FERC Form 556 require owners or operators of small power production or cogeneration facilities, who seek qualifying status for their facilities, to file the information requested in Form 556 for Commission certification as a qualifying facility (QF).

A primary objective of PURPA is the conservation of energy through efficient use of energy resources in the generation of electric power. One means of achieving this objective is to encourage electric power production by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use waste and renewable resources as fuel. PURPA through the establishment of various regulatory benefits, encourages the development of small power production facilities and cogeneration facilities which meet certain technical and corporate criteria. Facilities that meet these criteria are called QF's.

Owners and operators of small power production and cogeneration facilities desiring QF certification for their facilities must file the information prescribed in FERC Form 556 with the Commission. (A copy of the form can be obtained from the Commission's Web site at *http://www.ferc.gov/docs-filing/hard-fil-elec.asp#556*.) In addition to identifying the required filing information, FERC Form 556 also outlines the QF certification procedure, and specifies the criteria that must be met for QF certification. Respondents who comply with the FERC Form 556 criteria and are granted QF certification by the Commission are exempt from certain sections of the FPA and the Public Utility Holding Company Act of 1935 as listed in 18 CFR 292.601 and 292.602. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 292.

5. *Respondent Description:* The respondent universe currently comprises 297 respondents (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 10,368 total hours, 297 respondents (average per year), 1 response(s) per respondent, and 4 hours per response (using FERC Form 556) and 38 hours per response (using self certification) (average).

7. *Estimated Cost Burden to Respondents:* 10,368 hours / 2080 hours per years × $107,185 per year = $534,276.

Statutory Authority: Sections 3 of the Federal Power Act (FPA) (16 U.S.C. 792–828c) and Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C § 2601).

Magalie R. Salas,

Secretary.

[FR Doc. 04–24598 Filed 11–3–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0073; FRL–7833–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 6, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0073, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725

17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria Noell, Office of Air Quality Planning and Standards, Mail Code C339–03, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5607; fax number (919) 541–5509; E-mail address: *noell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2004 (69 FR 28885), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OAR–2004–0073, which is available for public viewing at the Air and Radiation Docket and Information Center, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is: (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants (40 CFR part 63, subpart B) (Renewal).

Abstract: Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 requires that maximum achievable control technology (MACT), determined on a case-by-case basis, be met by constructed or reconstructed major sources of hazardous air pollutants. In order to receive a permit to construct or reconstruct a major source, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory requirements. Permitting agencies, either State, local or Federal, review and approve or disapprove the permit application. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

The information collected in the section 112(g) applications provides (for the purposes of compliance determination) documentation of the selection of a particular control technology for case-by-case MACT. Applications are reviewed by a state or local agency for which authority has been delegated by EPA to make the requisite determinations. In addition, EPA will review some applications as an oversight function.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 245 hours per response. 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. This 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.

Respondents/Affected Entities: Entities potentially affected by this action are those who must submit an application for a permit to construct or reconstruct a major source of hazardous air pollution, permitting agencies who review the permit applications, and EPA staff who review some permitting authority decisions.

Estimated Number of Respondents: 150.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 36,800.

Estimated Total Annual Costs: $2,419,100, which includes $0 annualized capital/startup costs, $3,930 annual O&M costs, and $2,415,170 annual labor costs.

Changes in the Estimates: There is a decrease of 55,410 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in annual burden due to an improved estimate of the number of facilities and a decrease in annual per person training burden.

Dated: October 27, 2004.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 04–24661 Filed 11–3–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. William Reuben Broyles, Rainsville, Alabama; to acquire voting shares of Dekalb Bancshares, Inc., Fort Payne, Alabama, and thereby indirectly acquire Dekalb Bank, Crossville, Alabama.

2. Financial Corporation of Louisiana Employee Stock Ownership Plan, Crowley, Louisiana, and Argent Trust, Ruston, Louisiana, a division of National Independent Trust Company, Ruston, Louisiana, as trustee, to acquire Financial Corporation of Louisiana, Crowley, Louisiana, and thereby indirectly acquire First National Bank of Louisiana, Crowley, Louisiana, and Rayne State Bank & Trust Company, Rayne, Louisiana.

Board of Governors of the Federal Reserve System, October 29, 2004.

Margaret M. Shanks,

Assistant Secretary of the Board.

[FR Doc. 04–24643 Filed 11–3–04; 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 November 30, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Monmouth Community Bancorp, Long Branch, New Jersey; to acquire 100 percent of the voting shares of Allaire Community Bank, Wall Township, New Jersey.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Metropolitan Capital Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Metropolitan Capital Bank (in organization), Chicago, Illinois.

Board of Governors of the Federal Reserve System, October 29, 2004.

Margaret M. Shanks,

Assistant Secretary of the Board.

[FR Doc. 04–24644 Filed 11–3–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 10 a.m.
Date: November 9, 2004.
Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.
Status: Open.

Matters To Be Considered

1. Approval of the minutes of the March 23, 2004, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. Parallel call center/dedicated main frame computer and data center.
4. ''Life'' funds.
5. Legislation.
6. New business (spousal accounts).
7. Frequency of meetings.

For Further Information Contact: Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: October 29, 2004.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 04–24599 Filed 11–3–04; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through September 30, 2007 the current PRA clearance for information collection requirements contained in its Appliance Labeling Rule (''Rule''), promulgated pursuant to the Energy Policy and Conservation Act of 1975 (''EPCA''). That clearance was scheduled to expire on September 30, 2004. On September 14, 2004, the OMB granted the FTC's request for a short-term extension to November 30, 2004 to allow for this second opportunity to comment.

DATES: Comments must be submitted on or before December 6, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Appliance Labeling Rule: Paperwork comment, R611004'' 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 or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex U), 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.'' [1] The FTC is requesting

[1] 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

Continued

that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail address: *PaperworkComment@ftc.gov.*

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 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: Requests for additional information or copies of the proposed information collection requirements should be addressed to Hampton Newsome, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room NJ–2122, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: On July 21, 2004, the FTC sought comment on the information collection requirements associated with the Appliance Labeling Rule, 16 CFR part 305 (Control Number 3084–0069). *See* 69 FR 43587. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the rule.

The Appliance Labeling Rule establishes testing, reporting, recordkeeping, and labeling requirements for manufacturers of major household appliances. The requirements relate specifically to the disclosure of information relating to energy consumption and water usage. The Rule's testing and disclosure requirements enable consumers purchasing appliances to compare the energy use or efficiency of competing models. In addition, EPCA and the Rule require manufacturers to submit relevant data to the Commission regarding energy or water usage in connection with the products they manufacture. The Commission uses this data to compile ranges of comparability for covered appliances for publication in the **Federal Register**. These submissions, along with required records for testing data, may also be used in enforcement actions involving alleged misstatements on labels or in advertisements.

Burden Statement

Estimated annual hours burden: 467,000 hours.

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (360,721 hours); reporting (1,324 hours); recordkeeping (767 hours); labeling (101,333 hours); and retail catalog disclosures (2,550 hours). The total burden for these activities is 467,000 hours (rounded to the nearest thousand), which is the same as staff's previous estimate in its 2001 submission to OMB.

The following estimates of the time needed to comply with the requirements of the Rule are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and industry input and figures. Because compliance burden falls almost entirely on manufacturers and importers (with a *de minimis* burden for retailers), burden estimates are calculated on the basis of the number of domestic manufacturers and/or the number of units shipped domestically in the various product categories.

A. Testing

Under the Rule, manufacturers of covered products must test each basic model they produce to determine energy usage (or, in the case of plumbing fixtures, water consumption). The burden imposed by this requirement is determined by the number of basic models produced, the average number of units tested per model, and the time required to conduct the applicable test.

Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. The staff estimates that the frequency with which models are tested every year ranges roughly between 10% and 50% and that the actual percentage of basic models tested varies by appliance category. In addition, it is likely that only a small portion of the tests conducted is attributable to the Rule's requirements. Given the lack of specific data on this point, staff has conservatively assumed that all of the tests conducted are attributable to the Rule's requirements and will use the high end of the range noted above. Accordingly, the burden estimates are based on the assumption that 50% of all basic models are tested annually. Thus, the estimated testing burden for the various categories of products covered by the Rule is as follows: [2]:

Category of manufacturer	Number of basic models	Percentage of models tested (FTC required) (percent)	Avg. number of units tested per model	Hours per unit tested	Total annual testing burden hours
Refrigerators, Refrigerator-freezers, and Freezers	3,075	50	4	4	24,600
Dishwashers	393	50	4	1	786
Clothes washers	500	50	4	2	2,000
Water heaters	650	50	2	24	15,600
Room air conditioners	1,092	50	4	8	17,472
Furnaces	1,900	50	2	8	15,200
Central A/C	1,270	50	2	24	30,480

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).

[2] The following numbers reflect estimates of the basic models in the market. The actual numbers will vary from year to year. Since 2001, the staff has not identified any changes in the number of basic models that would yield a significant increase in the total burden hours for testing. The average number of units tested per model and the hours per unit tested are based on information from industry sources. However, the staff has identified an inadvertent error in its July 21, 2004 **Federal Register** Notice which failed to reflect the final calculation of burden hours submitted to OMB in 2001. Accordingly, the average number of tests for refrigeration products, dishwashers, clothes washers, and room air conditioners has been changed from two to four in the table.

Category of manufacturer	Number of basic models	Percentage of models tested (FTC required) (percent)	Avg. number of units tested per model	Hours per unit tested	Total annual testing burden hours
Heat pumps	903	50	2	72	65,016
Pool heaters	250	50	2	12	3,000
Fluorescent lamp ballasts	975	50	4	3	5,850
Lamp products	2,100	50	12	14	176,400
Plumbing fittings	1,700	50	2	2	3,400
Plumbing fixtures	22,000	50	1	.0833	917
					360,721

B. Reporting

Reporting burden estimates are based on information from industry representatives. Manufacturers of some products indicate that, for them, the reporting burden is best measured by the estimated time required to report on each model manufactured, while others state that an estimated number of annual burden hours by manufacturer is a more meaningful way to measure. The figures below reflect these different methodologies as well as the varied burden hour estimates provided by manufacturers of the different product categories that use the latter methodology.

Appliances, HVAC Equipment, and Pool Heaters

Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model. Based on this estimate, multiplied by a total of 10,033 basic models of these products, the annual reporting burden for the appliance, HVAC equipment, and pool heater industry is an estimated 334 hours (2 minutes × 10,033 models ÷ 60 minutes per hour).

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual reporting burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers, multiplied by the number of manufacturers in each respective category, as shown below:

Category of manufacturer	Annual burden hours per manufacturer	Number of manufacturers	Total annual reporting burden hours
Fluorescent lamp ballasts	6	20	120
Lamp products	15	50	750
Plumbing products	1	120	120

Total Reporting burden Hours

The total reporting burden for industries covered by the Rule is 1,324 hours annually (334 + 120 + 750 + 120).

C. Recordkeeping

EPCA and the Appliance Labeling Rule require manufacturers to keep records of the test data generated in performing the tests to derive information included on labels and required by the Rule. As with reporting, burden is calculated by number of models for appliances, HVAC equipment, and pool heaters, and by number of manufacturers for fluorescent lamp ballasts, lamp products, and plumbing products.

Appliances, HVAC Equipment, and Pool Heaters

The recordkeeping burden for manufacturers of appliances, HVAC equipment, and pool heaters varies directly with the number of tests performed. Staff estimates total recordkeeping burden to be approximately 167 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 10,033 tests performed annually (1 minute × 10,033 basic models ÷ 60 minutes per hour).[3]

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual recordkeeping burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers (derived from industry sources), multiplied by the number of manufacturers in each respective category, as shown below:

Category of manufacturer	Annual burden hours per manufacturer	Number of manufacturers	Total annual recordkeeping burden hours
Fluorescent lamp ballasts	2	20	40
Lamp products	10	50	500
Plumbing products	.5	120	60

[3] The amount of annual tests performed is derived by multiplying the number of basic models within the relevant product categories by the average number of units tested per model within each category (the underlying information may be drawn from the table in Section A.).

Total Recordkeeping Burden Hours

The total recordkeeping burden for industries covered by the Rule is 767 hours annually (167 + 40 + 500 + 60).

D. Labeling

EPCA and the Rule require that manufacturers of covered products provide certain information to consumers, through labels, fact sheets, or permanent markings on the products. The burden imposed by this requirement consists of (1) the time needed to prepare the information to be provided, and (2) the time needed to provide it, in whatever form, with the products. The applicable burden for each category of products is described below:

Appliances, HVAC Equipment, and Pool Heaters

EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only add the energy consumption figures derived from testing. In addition, most larger companies use automation to generate labels, and the labels do not change from year to year. Given these considerations, staff estimate that the time to prepare labels for appliances, HVAC equipment, and pool heaters is no more than four minutes per basic model. Thus, for appliances, HVAC equipment, and pool heaters, the approximate annual drafting burden involved in preparing labels is 669 hours per year [10,033 (basic models) × 4 minutes (drafting time per basic model) ÷ 60 (minutes per hour)].

Industry representatives and trade associations have estimated that it takes between 4 and 8 seconds to affix each label to each product. Based on an average of 6 seconds per unit, the annual burden for affixing labels to appliances, HVAC equipment, and pool heaters is 83,522 hours [6 (seconds) × 50,113,098 (the number of total products shipped) ÷ 3,600 (seconds per hour)].

The Rule also requires that HVAC equipment manufacturers disclose energy usage information on a separate fact sheet or in an approved industry-prepared directory of products. Staff has estimated the preparation of these fact sheets requires approximately 30 minutes per basic model. Manufacturers producing at least 95 percent of the affected equipment, however, are members of trade associations that produce approved directories (in connection with their certification programs independent of the Rule) that satisfy the fact sheet requirement. Thus, the drafting burden for fact sheets for HVAC equipment is approximately 102 hours annually [4,073 (basic models) × .5 hours × .05 (proportion of equipment for which fact sheets are required)].

The Rule allows manufacturers to prepare a directory containing fact sheet information for each retail establishment as long as there is a fact sheet for each basic model sold. Assuming that six HVAC manufacturers (*i.e.*, approximately 5% of HVAC manufacturers), produce fact sheets instead of having required information shown in industry directories, and each spends approximately 16 hours per year distributing the fact sheets to retailers and in response to occasional consumer requests, the total time attributable to this activity would also be approximately 96 hours.

The total annual labeling burden for appliances, HVAC equipment, and pool heaters is 669 hours for preparation plus 83,522 hours for affixing, or 84,191 hours. The total annual fact sheet burden is 102 hours for preparation and 96 hours for distribution, or 198 hours. The total annual burden for labels and fact sheets for the appliance, HVAC, and pool heater industries is, therefore, estimated to be 84,389 hours.

Fluorescent Lamp Ballasts

The statute and the Rule require that labels for fluorescent lamp ballasts contain an ''E'' within a circle. Since manufacturers label these ballasts in the ordinary course of business, the only impact of the Rule is to require manufacturers to reformat their labels to include the ''E'' symbol. Thus, the burden imposed by the Rule for labeling fluorescent lamp ballasts is minimal.

Lamp Products

The burden attributable to labeling lamp products is also minimal, for similar reasons. The Rule requires certain disclosures on packaging for lamp products. Since manufacturers were already disclosing the substantive information required under the Rule prior to its implementation, the practical effect of the Rule was to require that manufacturers redesign packaging materials to ensure they include the disclosures in the manner and form prescribed by the Rule. Because this effort is now complete, there is no ongoing labeling burden imposed by the Rule for lamp products.

Plumbing Products

The statute and the Rule require that manufacturers disclose the water flow rate for plumbing fixtures. Manufacturers may accomplish this disclosure by attaching a label to the product, through permanent markings imprinted on the product as part of the manufacturing process, or by including the required information on packaging material for the product. While some methods might impose little or no additional incremental time burden and cost on the manufacturer, other methods (such as affixing labels) could. Thus, staff estimate an overall blended average burden associated with this disclosure requirement of one second per unit sold. Staff also estimate that there are approximately 9,000,000 covered fixtures and 52,000,000 fittings sold annually in the country. Therefore, the estimated annual burden to label plumbing products is 16,944 hours [61,000,000 (units) × 1 (seconds) ÷ 3,600 (seconds per hour)].

Total Burden for Labeling

The total labeling burden for all industries covered by the Rule is 101,333 hours (84,389 + 16,944) annually.

E. Retail Sales Catalogs Disclosures

The Rule requires that sellers offering covered products through retail sales catalogs disclose in the catalog energy (or water) consumption for each covered product. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

Paper catalog sellers now have substantial experience with the Rule and its requirements and it is likely that many of the required disclosures would be made in the ordinary course of business. Thus, staff believe that any incremental burden the Rule imposes on these paper catalog sellers would be minimal.

Staff estimates that there are an additional 150 new online sellers of covered products who are subject to the Rule's catalog disclosure requirements. Many of these sellers may not have the experience the paper catalog sellers have in incorporating energy and water consumption data into their catalogs. Staff estimates that these online sellers each require approximately 17 hours per year to incorporate the data into their online catalogs. This estimate is based on the assumption that entry of the required information takes 1 minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products (based on a sampling of Web sites of affected retailers). Given that there is a great variety among sellers in the volume of products they offer online, it is very difficult to estimate such volume with precision. In addition, this analysis assumes that information for all 1,000

products is entered into the catalog. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. The total catalog disclosure burden for all industries covered by the Rule is 2,550 hours (150 sellers x 17 hours annually).

Estimated annual cost burden: ($8,353,641 in labor costs and $3,519,422 in capital or other non-labor costs).

Labor Costs: Staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by skilled technical personnel at an hourly rate of $20.00, and that recordkeeping and reporting, and labeling, marking, and preparation of fact sheets, generally are performed by clerical personnel at an hourly rate of $10.75.

Based on the above estimates and assumptions, the total annual labor costs for the five different categories of burden under the Rule, applied to all the products covered by it, is $8,353,641 (rounded to the nearest thousand), derived as follows:

Activity	Burden hours per year	Wage category hourly rate	Total annual labor cost
Testing	360,721	Skilled technical/$20	$7,214,420
Reporting	1,324	Clerical/$10.75	14,233
Recordkeeping	767	Clerical/$10.75	8,245
Labeling, marking, and fact sheet preparation	101,333	Clerical/$10.75	1,089,330
Catalog disclosures	2,550	Clerical/$10.75	27,413
			8,353,641

Capital or Other Non-Labor Costs: $3,519,000 (rounded), determined as follows:

Staff has examined the five distinct burdens imposed by EPCA through the Rule—testing, reporting, recordkeeping, labeling, and retail catalog disclosures—as they affect the 11 groups of products that the Rule covers. Staff has concluded that there are no current start-up costs associated with the Rule. Manufacturers have in place the capital equipment necessary—especially equipment to measure energy and/or water usage—to comply with the Rule.

Under this analysis, testing, recordkeeping, and retail catalog disclosures are activities that incur no capital or other non-labor costs. As mentioned above, testing has been performed in these industries in the normal course of business for many years as has the associated recordkeeping. The same is true regarding compliance applicable to the requirements for paper catalogs. Manufacturers and retailers who make required disclosures in catalogs already are producing catalogs in the ordinary course of their businesses; accordingly, capital cost associated with such disclosure would be minimal or nil. Staff recognizes that there may be initial costs associated with posting online disclosure, and it invites further comment to reasonably quantify such costs.

Manufacturers that submit required reports to the Commission directly (rather than through trade associations) incur some nominal costs for paper and postage. Staff estimates that these costs do not exceed $2,500. Manufacturers must also incur the cost of procuring labels and fact sheets used in compliance with the Rule. Based on estimates of 50,113,098 units shipped and 128,650 fact sheets prepared,[4] at an average cost of seven cents for each label or fact sheet, the total (rounded) labeling cost is $3,516,922.

William E. Kovacic,

General Counsel.

[FR Doc. 04–24655 Filed 11–3–04; 8:45 am]

BILLING CODE 6750–01–P

[4] The units shipped total is based on combined actual or estimated industry figures across all of the product categories, except for fluorescent lamp ballasts, lamp products, and plumbing products. Staff has determined that, for those product categories, there are little or no costs associated with the labeling requirements. The fact sheet estimation is based on the previously noted assumption that five percent of HVAC manufacturers produce fact sheets on their own. Based on total HVAC units shipped (10,291,965), five percent amounts to 514,598 HVAC units. Because manufacturers generally list more than one unit on a fact sheet, staff has estimated that manufacturers independently preparing them will use one sheet for every four of these 514,598 units. Thus, staff estimates that HVAC manufacturers produce approximately 128,650 fact sheets.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Injury Biomechanics, and Acute Injury Care Research

Announcement Type: New.

Funding Opportunity Number: CE05–021.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent (LOI) Deadline: December 6, 2004.

Application Deadline: February 2, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a)[42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 funds for grants for new investigator training awards in four research areas: unintentional injury prevention, violence-related injury prevention, injury-related acute care/mass trauma research, and injury-related biomechanics research. This program addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention.

The purposes of this program are to:

- Solicit research applications that address the priorities reflected under the heading, ''Research Objectives''.
- Encourage professionals from a wide spectrum of disciplines to conduct research aimed at preventing and controlling injuries more effectively.
- Support injury research by new investigators who are doctoral-level graduates and who have not previously received injury-related CDC R49 or their equivalent grants.
- Build the scientific base for the prevention and control of unintentional- and violence-related injuries, disabilities, and deaths.

• Encourage qualified applicants who are beginning to focus on injury-related research.

The career development objectives of this program are to encourage scientists to develop independent research skills and to gain experience in advanced methods and experimental approaches in injury-related research. This program is also intended to jump start the careers of researchers in injury prevention and control by providing support for pilot studies, enhancements to existing studies, or other studies that will serve as a foundation for a career in injury prevention and control. Applicants are required to have a mentor with extensive injury research experience who will assist the applicant with scientific and career-related issues during the period of the award.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control (NCIPC):

• Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

• Monitor and detect fatal and non-fatal injuries.

• Conduct a targeted program of research to reduce injury-related death and disability.

Background and Significance

Unintentional Injury Research

For the purposes of this program announcement, unintentional injuries are defined as unintentional damage to the body resulting from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of such essentials as heat or oxygen.

Unintentional injuries continue to be a major public health problem. In 2000, 97,900 people died in the United States as a result of unintentional injuries. Someone dies every six minutes in the U.S. from causes such as motor vehicle crashes, falls, poisoning, drowning, fires and burns, pedestrians struck by vehicles, bicycle crashes, or choking and suffocation. In addition to deaths, injuries also constitute a significant cause of both permanent and temporary disability. In 2000, unintentional injuries resulted in an estimated 29.1 million emergency department visits and millions more seek treatment for injuries from health care professionals. In addition to the emotional costs of injuries, the financial costs of unintentional injuries are staggering: well over $200 billion a year in medical care, wage and productivity losses and employer costs alone. Unintentional injuries are not accidents, they are predictable and they are preventable.

Violence Related Injury Research

Deaths and injuries associated with interpersonal violence and suicidal behavior are also a major public health problem in the United States and around the world. In 2000, over 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide and suicide ranked as the second and third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 nonfatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity resulting from violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

Biomechanics Research

The field of biomechanics quantifies the response and tolerance of the human body to impact (*e.g.,* motor vehicle collisions, playground falls, and child battering) and addresses the underlying mechanisms of injury, the forces deforming the body and the physiologic effects of injury to infants, children, adults and the aged population. Based on interdisciplinary research, the engineering factors are determined that deform the body and the medical consequences are quantified that affect vital functions. This knowledge is used to modify the design of protective systems to improve safety. Improved safety systems protect an individual from impact forces that can injure, and they can include protective equipment (cycling helmets) and environments (playground surfaces), occupant restraints (airbags and safety belts), and policies (rules to minimize spearing in football). Biomechanical knowledge can also be used to improve post-injury outcomes through physiologic models to address emergency medical treatments, pharmacologic interventions and rehabilitation to advance recovery.

NCIPC's biomechanics program attempts to build on the basic knowledge of biomechanics and encourage interdisciplinary intervention-oriented injury control research as supported in the CDC Injury Research Agenda.

Acute Injury Care Research

Each year, Americans make between 30 and 40 million emergency department (ED) visits for injuries. While most injured patients are treated and released, many are admitted to inpatient trauma units and later receive rehabilitative services. The most favorable outcomes are achieved when acute care and subsequent rehabilitation are offered as early as possible and focus on returning patients to baseline or to an optimal level of functioning. Trauma systems are designed to match trauma patients with the acute care and rehabilitative facilities they need, but in many parts of the U.S. trauma systems are not fully operational or are nonexistent. Where these systems are lacking, as many as 30 percent to 40 percent of deaths among trauma patients are due to preventable problems in clinical care, including missed diagnoses and treatment delays.

Injuries are a major cause of disabilities in the U.S. Central nervous system injuries (those to the brain and spinal cord) are most likely to result in serious long-term disability. Each year, an estimated 80,000 Americans sustain a traumatic brain injury (TBI) that results in disability; an estimated 5.3 million Americans live with TBI-related disability. Although physical impairments from the injury may contribute to TBI disability, cognitive deficits are the hallmark, frequently resulting in secondary conditions such as depression and other adverse outcomes such as the inability to work. An estimated 177,000 to 200,000 people in the U.S. live with spinal cord injuries (SCI), and this number increases annually by as many as 20,000 individuals.

Research Objectives

Applicants are encouraged to propose studies that can feasibly be completed within the available funds and funding period. Proposed research for this program announcement must address one of the following research priorities. Applications that fail to address one of these topics will be deemed nonresponsive.

Unintentional Injury

1. Develop a theory-based intervention for use of supervision of children to reduce unintentional injury outcomes.

2. Evaluate existing and develop new methods to obtain exposure and injury

incidence data for sports, exercise and recreation-related injuries.

3. Identify risk and protective factors related to injury from childhood falls, crashes involving young drivers or related to motor vehicle and pedestrian travel of older adults.

4. Evaluate the effectiveness of environmental, behavioral, legislative or regulatory interventions to prevent pedestrian injuries or injuries related to sports, exercise, and recreation (including drowning).

5. Assess how tailoring, training, packaging, feasibility (and other dimensions of an effective intervention or policy) would promote greater adoption, usability and uptake, especially for interventions that impact older adult falls injury, transportation safety, and sports & recreation injury prevention (including drowning).

6. Evaluate theory-based strategies to increase dissemination of effective interventions that reduce injuries related to transportation, at home, or during recreation.

For more information on the unintentional injury research objectives, see Attachment 2 of this announcement. The attachment is posted along with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*.

Violence Related Injury

1. Conduct studies to build knowledge on methods, structures, and processes to implement evidence-based interventions, programs and policies to prevent intimate partner violence, child maltreatment and youth violence. This research is intended to bridge the gap between prevention research and everyday practice by building a knowledge base about how evidence-based violence prevention information and strategies are disseminated, translated and integrated for use by communities and policymakers.

2. Evaluate the efficacy, effectiveness, and cost effectiveness of primary prevention interventions, programs, and policies to prevent perpetration of intimate partner violence, sexual violence, child maltreatment (includes physical, sexual, emotional abuse and neglect), youth violence or suicidal behavior. There is particular interest in assessing the impact of interventions, programs, or policies that may affect multiple forms of violence simultaneously.

3. Identify protective factors across at least two levels of influence (*e.g.*, individual, family, peers, school/workplace, neighborhood, community) that reduce risk for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior among populations at elevated risk for engaging in such behaviors.

Injury Biomechanics

1. Use biomechanics research and the knowledge of injury tolerance and injury mechanisms to develop and/or evaluate interventions that address the following specific injury prevention and control problems. An intervention can be broadly defined as a specific action, policy, device or strategy designed to address injury prevention and control:

a. Falls that occur among older, community dwelling adults (*e.g.,* hip pads).

b. Injuries in mass trauma events.

c. Severe and disabling falls among children.

d. Sports, recreation, and exercise-related injuries (*e.g.,* playground and other play environments, safety gear).

e. Injuries associated with people initiating or increasing physical activity (*e.g.,* training programs or protective devices).

f. Injuries related to outdoor recreation (*e.g.,* vehicle design).

g. Motorcycling, bicycling and pedestrian injuries (*e.g.,* improved helmets or environments).

h. Injuries to child occupants of motor vehicles (*e.g.,* universal fasteners and alternative restraint designs).

i. Injuries to older drivers.

j. Injuries associated with the effects of emerging vehicle technologies.

2. Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions.

3. Advance the biomechanical understanding of traumatic injury (*e.g.,* injuries to the brain, spinal cord, thorax/abdomen, extremities and joints) in children and older adults (greater than 65 years old) including: development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.,* brain and vertebral injury with spinal cord involvement).

4. Define the human tolerance limits for injury in children and older adults (greater than 65 years old), especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.

5. Identify the modifiable risk factors for and mechanisms of nonfatal whiplash injuries of the neck and back.

Acute Injury Care

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury.

2. Identify methods and strategies to ensure that people with traumatic brain injuries (TBI) and spinal cord injuries (SCI) receive needed services.

3. Identify the effects on acute injury care of inter-jurisdictional, legal, governmental, and interdisciplinary issues related to mass casualty events.

4. Identify and evaluate the components of trauma systems which contribute to improvement in care of the injured.

5. Develop and evaluate new methods for linking prehospital databases to trauma registries, and other hospital databases, including those related to subsequent levels of care (*e.g.,* rehabilitation).

Approximately $500,000 of the total award amount will be reserved to fund up to five proposals that address acute injury care research.

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of injury. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow the guidelines in the following references:

Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

For randomized trials, applicants are encouraged to clearly state how study subjects, whether individuals or groups, were selected, randomized, and followed through the trial. One relevant useful guidance document is Moher D, Schulz KF, Altman D, The CONSORT Statement, JAMA 2001;285:1987–2001.

II. Award Information

Type of Award: Grant.
Mechanism of Support: R49.
Fiscal Year Funds: 2005.
Approximate Total Funding: $900,000. (This amount is an estimate, and is subject to availability of funds.)
Approximate Number of Awards: Nine (Up to five of these awards will be made in the area of acute care research).
Approximate Average Award: $100,000. (This amount includes both direct and indirect costs.)
Floor of Award Range: None.
Ceiling of Award Range: $100,000. (This amount includes both direct and indirect costs.)
Anticipated Award Date: August 30, 2005.
Budget Period Length: 12 months.
Project Period Length: One year.
Allowable costs include partial salary and tuition support for the applicant; direct research project expenses, such as trainee stipends, interviewer costs, data processing, participant incentives, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified. Applicants should also include travel costs for one, two-day trip to CDC in Atlanta to present research findings.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- 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).
- Political subdivisions of States (in consultation with States).

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.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

It is especially important that the abstract of your grant application (Description, PHS 398 form page 2) reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Special Requirements

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.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

- Grant applications must demonstrate an overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Research Objectives.''

- Applications must demonstrate effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

- *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.

Individuals Eligible To Become Principal Investigators

- The principal investigator must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience.
- Applicants who have been the principal investigator on an RO1 or RO1-equivalent health-related research grant or who have had equivalent injury-related research support from an existing Injury Control Research Center (ICRC) are not eligible. Recipients of dissertation research grants or NIH Small Grant Awards are eligible to apply.
- A principal investigator who has specific authority and responsibility to carry out the proposed project.
- The ability of the principal investigator to carry out injury control research projects as defined under Attachment 1 of this program announcement. The attachment is posted along with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

Applications, which do not meet the above requirements, will be considered non-responsive.

Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above 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.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address:

http://grants.nih.gov/grants/funding/phs398/phs398.html.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- *Maximum Number of Pages:* Two.
- *Font Size:* 12-point unreduced.
- *Paper Size:* 8.5 by 11 inches.
- *Page Margin Size:* One inch.
- *Printed only on one side of page.*
- *Single spaced.*
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement.
- Brief description of the scope and intent of the proposed research work.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. 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*.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

This announcement uses the non-modular budgeting format. Follow the PHS–398 instructions for non-modular budget research grant applications.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components:

- Statement of the problem.
- Purpose of the proposed research.
- Methods, including study population, data sources and any statistical analyses to be performed.
- Implications for prevention.

The Description (abstract) should answer the following questions:

- Does the Description state the hypothesis?
- Does the Description describe the objectives and specific aims?
- Does the Description state the importance of the research and how it is innovative?
- Does the Description outline the methods that will be used to accomplish the goals?
- Is the language of the Description simple and easy to understand for a broad audience?

You must include a research plan in your application. The research plan should be no more than 25 pages, printed on one side, single spaced, with one half-inch margins, and unreduced 12-point font. The research plan should address activities to be conducted over the entire project period. Use the information in the Research Objectives, Administrative and National Policy Requirements, and Application Review Information sections to develop the application content. The research plan should include the following information:

- The project's focus, a justification for the research proposed, and a description of the scientific basis for the research. The focus should be based on recommendations in ''Healthy People 2010'' (*http://www.healthypeople.gov*) and the ''CDC Injury Research Agenda,'' (*http://www.cdc.gov/ncipc/pub-res/research_agenda/agenda.htm*) and should seek creative approaches that will contribute to a national program for injury control.
- Specific, measurable, and time-framed objectives.
- A detailed plan describing the methods, which will achieve the objectives, including their sequence. A comprehensive evaluation plan is an essential component of the application.
- A description of the roles and responsibilities of the principal investigator and the mentor.
- A description of those activities related to, but not supported by, the grant.
- A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.
- An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

Additional materials required: In addition to the completed PHS 398 application form, the applicant must also submit the following materials, attached to the application as appendices:

- An official transcript of the applicant's graduate school record.
- A statement describing the applicant's prior research training and experience and short and long term career goals in injury research, including a paragraph describing why he or she qualifies as a new investigator.
- A letter from a senior injury researcher acknowledging that he or she has read the application and agrees to serve as a mentor. The letter should also include: (1) An outline of the mentor's specific roles and responsibilities and time commitment (percent time); (2) a proposed plan for providing scientific advice and consultation to the applicant; and (3) a two-page biography of the mentor. (Use the Biographical Sketch page in application form PHS 398.)
- A justification for any proposed tuition support.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

For additional help in preparing your grant application please see the ''frequently asked questions'' section on the NCIPC Web page at: *http://www.cdc.gov/ncipc/res-opps/2004pas.htm*.

IV.3. Submission Dates and Times

LOI Deadline Date: December 6, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: February 2, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office (PGO) (not NIH) by 4 p.m. eastern time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and grant application content, 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 you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board (IRB) approvals are in place.
- Grant funds will not be made available to support the provision of direct care.
- Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.
- Allowable costs include partial salary and tuition support for the applicant; direct research project expenses, such as trainee stipends, interviewer costs, data processing, participant incentives, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified.
- Applicants should also include travel costs for one, two-day trip to CDC in Atlanta to present research findings.
- Funds for tuition support are limited to no more than 20 percent of the overall award and their use must be generally related to the content and methods of the proposed research.
- Indirect costs for this trainee-related grant are limited to eight percent.

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.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: NCIPC Extramural Resources Team, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341, Telephone: (770) 488–4037, Fax: (770) 488–1662, e-mail: *CIPERT@CDC.GOV*.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—CE05–021, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control.

Address for Express Mail or Delivery Service: 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to improve the control and prevention of disease and injury and to 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 equally 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 review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Is there a

prior history of conducting injury-related research?

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? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Dissemination: What plans have been articulated for disseminating findings?

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.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the PGO and for responsiveness by NCIPC. 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 announcement will be evaluated for scientific and technical merit by an appropriate peer review panel convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.

The primary review will be a peer review conducted by NCIPC Initial Review Group (IRG). Applications may be subjected to a preliminary evaluation (streamline review) by the IRG to determine if the application is of sufficient technical and scientific merit to warrant further review. NCIPC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by the IRG. These applications will be reviewed for scientific merit using current NIH criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials).

ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The ACIPC committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research.

The factors to be considered will include:

- The results of the primary review including the application's priority score as the primary factor in the selection process.
- The relevance and balance of proposed research relative to the NCIPC programs and priorities.
- The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.'' (*See* Attachment 1, Resource Materials.) The attachment is posted along with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*).
- Budgetary considerations.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

August 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–3 Animal Subjects Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–22 Research Integrity.

Additional information on AR–1 through AR–22 can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

- AR–25 Release and Sharing of Data.

Starting with the December 1, 2003 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the ''Research Plan'' section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements) The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count toward the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Financial status report, no more than 90 days after the end of the budget period.

2. The final performance report, no more than 90 days after the end of the project period. The final performance report will be a brief summary (2,500 to 4,000 words in length) written in non-scientific [laymen's] terms. The report should highlight the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, State injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, 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: Paul Smutz, Ph.D, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341, Telephone: (770) 488–1508, E-mail: *wsmutz1@cdc.gov*.

For questions about peer review, contact: Gwendolyn Cattledge, Ph.D, Scientific Review Administrator, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341, Telephone: 770–488–1430, E-mail: *gxc8@cdc.gov*.

For financial, grants management, or budget assistance, contact: Pamela Render, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2712, E-mail: *PLR3@cdc.gov*.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24616 Filed 11–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Grants for Traumatic Injury Biomechanics Research

Announcement Type: New.

Funding Opportunity Number: CE05–023.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: December 6, 2004. *Application Deadline:* February 2, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Purpose: The purposes of the program are to:

- Solicit research applications that address the priorities reflected under the heading, ''Research Objectives''.
- Build the scientific base for the prevention and control of fatal and nonfatal injuries and related disabilities.
- Encourage professionals from a wide spectrum of disciplines of epidemiology, behavioral and social sciences, medicine, biostatistics, public health, law, criminal justice, and engineering to perform research in order to prevent and control injuries more effectively.
- Encourage investigators to propose research that: involves intervention development and testing as well as research on methods; enhances the adoption and maintenance of effective intervention strategies among individuals, organizations, or communities.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control (NCIPC):

- Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.
- Monitor and detect fatal and non-fatal injuries.
- Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives

NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of non-occupational unintentional and violence-related injuries, and to minimize the consequences of injuries when they do occur. NCIPC's public health approach draws on biomechanics in seven topic areas:

1. Preventing Injuries at Home and in the Community.
2. Preventing Injuries in Sports, Recreation, and Exercise.
3. Preventing Transportation Injuries.
4. Preventing Intimate Partner Violence, Sexual Violence, and Child Maltreatment.
5. Preventing Suicidal Behavior.
6. Preventing Youth Violence.
7. Acute Care, Disability, and Rehabilitation.

The following research themes are the focus of this solicitation: (Applications that fail to address one of these research objectives will be considered non-responsive).

High Priority

It is expected that half of the total awards will address high priority objectives.

1. Use biomechanics research and the knowledge of injury tolerance and injury mechanisms to develop and/or evaluate interventions that address the following specific injury prevention and control problems. An intervention can be broadly defined as a specific action, policy, device or strategy designed to address injury prevention and control:

a. Falls that occur among older, community dwelling adults (*e.g.*, hip pads).

b. Injuries in mass trauma events.

c. Severe and disabling falls among children.

d. Sports, recreation, and exercise-related injuries (*e.g.*, playground and other play environments, safety gear).

e. Injuries associated with people initiating or increasing physical activity (*e.g.*, training programs or protective devices).

f. Injuries related to outdoor recreation (*e.g.*, vehicle design).

g. Motorcycling, bicycling and pedestrian injuries (*e.g.*, improved helmets or environments).

h. Injuries to child occupants of motor vehicles (*e.g.*, universal fasteners and alternative restraint designs).

i. Injuries to older drivers.

j. Injuries associated with the effects of emerging vehicle technologies.

2. Identify the biomechanics and specific injuries that would be highly predictive of diagnoses of intimate partner violence and child maltreatment, and improve case definitions.

Lower Priority

3. Advance the biomechanical understanding of traumatic injury (*e.g.*, injuries to the brain, spinal cord, thorax/abdomen, extremities and joints) in children and older adults (greater than 65 years old) including: Development of biofidelic models to elucidate injury physiology as well as pharmacologic, surgical, rehabilitation, and other interventions; improvement of injury assessment technology; impact injury mechanisms research; and quantification of injury-related biomechanical responses for critical areas of the human body (*e.g.*, brain and vertebral injury with spinal cord involvement).

4. Define the human tolerance limits for injury in children and older adults (greater than 65 years old), especially determining the differences in human tolerance by age, fitness level, and gender and the biomechanics and injury tolerances of tissue, bone, and other human structures as a prerequisite for developing interventions.

5. Identify the modifiable risk factors for and mechanisms of nonfatal whiplash injuries of the neck and back.

Applicants need to identify and explain in their grant application whether they are addressing a high or lower priority research objective. They also need to provide a short justification as to why they feel their grant application fits into the high or lower priority research objectives. This justification should not exceed one page in length.

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of injury. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow the guidelines in the following references:

Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

For randomized trials, applicants are encouraged to clearly state how study subjects, whether individuals or groups, were selected, randomized, and followed through the trial. One relevant useful guidance document is Moher D, Schulz KF, Altman D. The CONSORT Statement, JAMA 2001; 285:1987–2001.

II. Award Information

Type of Award: Grant.

Mechanism of Support: R49.

Fiscal Year Funds: 2005.

Approximate Total Funding: $840,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Three.

Approximate Average Award: $280,000. (This amount is for the first 12-month budget period and includes both direct and indirect costs. $840,000 total is available over the three year project period.)

Floor of Award Range: None.

Ceiling of Award Range: $280,000. (This amount is for the first 12-month budget period and includes both direct and indirect costs. $840,000 total is available over the three year project period.)

Anticipated Award Date: August 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

Consideration will also be given to current grantees that submit a competitive supplement application requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- 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).
- Political subdivisions of States (in consultation with States).

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.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

It is especially important that the abstract of your grant application (Description, PHS 398 form page 2) reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Special Requirements

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.

- Late applications will be considered non-responsive. *See* section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Grant applications must demonstrate an overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Research Objectives.''
- Applications must demonstrate effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- *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.

Individuals Eligible To Become Principal Investigators

- A principal investigator who has conducted injury prevention and control research, published the findings in a peer-reviewed journal, and has specific authority and responsibility to carry out the proposed project.
- The ability of the principal investigator to carry out injury control research projects as defined under Attachment 1 of this program announcement. The attachment is posted along with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*

Applications, which do not meet the above requirements, will be considered non-responsive.

Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above 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.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Single spaced.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement.
- Brief description of the scope and intent of the proposed research work.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. 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.*

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 announcement uses the non-modular budgeting format. Follow the PHS–398 instructions for non-modular budget research grant applications.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components:

- Statement of the problem.
- Purpose of the proposed research.
- Methods, including study population, data sources and any statistical analyses to be performed.
- Implications for prevention.

The Description (abstract) should answer the following questions:

- Does the Description state the hypothesis?
- Does the Description describe the objectives and specific aims?
- Does the Description state the importance of the research and how it is innovative?
- Does the Description outline the methods that will use to accomplish the goals?
- Is the language of the Description simple and easy to understand for a broad audience?

You must include a research plan in your application. The research plan should be no more than 25 pages, printed on one side, single spaced, with one half-inch margins, and unreduced 12-point font. The research plan should address activities to be conducted over the entire project period. Use the information in the Research Objectives, Administrative and National Policy Requirements, and Application Review Information sections to develop the application content. The research plan should include the following information:

- The project's focus, a justification for the research proposed, and a description of the scientific basis for the research. The focus should be based on recommendations in ''Healthy People 2010'' (*http://www.healthypeople.gov*) and the ''CDC Injury Research Agenda,'' (*http://www.cdc.gov/ncipc/pub-res/research_agenda/agenda.htm*) and should seek creative approaches that will contribute to a national program for injury control.
- Specific, measurable, and time-framed objectives.
- A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.
- A description of the principal investigator's role and responsibilities.
- A description of those activities related to, but not supported by, the grant.
- A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.
- An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

For additional help in preparing your grant application please see the ''frequently asked questions'' section on the NCIPC Web page at: *http://www.cdc.gov/ncipc/res-opps/2004pas.htm.*

IV.3. Submission Dates and Times

LOI Deadline Date: December 6, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: February 2, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office (PGO) (not NIH) by 4:00 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and grant application content, 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 you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board (IRB) approvals are in place.
- Grant funds will not be made available to support the provision of direct care.

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.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: NCIPC Extramural Resources Team, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341, Telephone: (770) 488–4037, Fax: (770) 488–1662, E-mail: *CIPERT@CDC.GOV.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—CE05–023, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control.

Address for Express Mail or Delivery Service: 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to improve the control and prevention of disease and injury and to 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 equally 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 review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Is there a prior history of conducting injury-related research?

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? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Dissemination: What plans have been articulated for disseminating findings?

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.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the PGO and for responsiveness by NCIPC. 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 announcement will be evaluated for scientific and technical merit by an appropriate peer review panel convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.

The primary review will be a peer review conducted by NCIPC Initial Review Group (IRG). Applications may be subjected to a preliminary evaluation (streamline review) by the IRG to determine if the application is of sufficient technical and scientific merit to warrant further review. NCIPC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by the IRG. These applications will be reviewed for scientific merit using current NIH criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials).

ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The ACIPC committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

- The results of the primary review including the application's priority score as the primary factor in the selection process.
- The relevance and balance of proposed research relative to the NCIPC programs and priorities.
- The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.'' (*See* Attachment 1, Resource Materials. The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm).*
- Budgetary considerations.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRG. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRG and the secondary review group.

Continued Funding

Continuation awards made after FY 2005, but within the project period, will be made on the basis of the availability of funds and the following criteria:

- The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated through presentations at work-in-progress monitoring workshops (travel expenses for this annual one-day meeting should be included in the applicant's proposed budget).
- The objectives for the new budget period are realistic, specific, and measurable.
- The methods described will clearly lead to achievement of these objectives.
- The evaluation plan will allow management to monitor whether the methods are effective.
- The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

August 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–3 Animal Subjects Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–22 Research Integrity.

Additional information on AR–1 through AR–22 can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

- AR–25 Release and Sharing of Data.

Starting with the December 1, 2003 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/ released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the ''Research Plan'' section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements) The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count toward the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet at: *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. 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. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief summary 2,500 to 4,000 words written in non-scientific [laymen's] terms. The narrative should highlight the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, State injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, 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: Paul Smutz, Ph.D, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Telephone: (770) 488–1508, Atlanta, GA 30341, E-mail: *wsmutz@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, Ph.D, Scientific Review Administrator, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341, Telephone: (770) 488–1430, E-mail: *gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: James Masone, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2736, E-mail: *zft2@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24617 Filed 11–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Grants for Violence-Related Injury Prevention Research: Youth Violence, Suicidal Behavior, Child Maltreatment, Intimate Partner Violence, and Sexual Violence

Announcement Type: New.

Funding Opportunity Number: CE05–012.

Catalog of Federal Domestic Assistance Number: 93.136.

DATES: *Key Dates: Letter of Intent Deadline:* December 6, 2004.

Application Deadline: February 2, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Purpose: The purposes of the program are to:

- Solicit research applications that address the priorities reflected under the heading, ''Research Objectives''.
- Build the scientific base for the prevention and control of fatal and nonfatal injuries and related disabilities.
- Encourage professionals from a wide spectrum of disciplines of epidemiology, behavioral and social sciences, medicine, biostatistics, public health, law, criminal justice, and engineering to perform research in order to prevent and control injuries more effectively.
- Encourage investigators to propose research that: involves intervention development and testing as well as research on methods; enhances the adoption and maintenance of effective intervention strategies among individuals, organizations, or communities.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control (NCIPC):

- Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.
- Monitor and detect fatal and non-fatal injuries.
- Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives: NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of violence, its causes, and prevention strategies. The following research themes are the focus of this investigator-initiated solicitation: (Applications that fail to address one of these three research objectives will be considered non-responsive.)

1. Conduct studies to build knowledge on methods, structures, and processes to implement evidence-based interventions, programs and policies to prevent intimate partner violence, child maltreatment and youth violence. This research is intended to bridge the gap between prevention research and everyday practice by building a knowledge base about how evidence-based violence prevention information and strategies are disseminated, translated and integrated for use by communities and policy makers. ($600,000 will be reserved to fund up to two proposals addressing this priority.)

2. Evaluate the efficacy, effectiveness, and cost effectiveness of primary prevention interventions, programs, and policies to prevent perpetration of intimate partner violence, sexual violence, child maltreatment (includes physical, sexual, emotional abuse and neglect), youth violence or suicidal behavior. There is particular interest in assessing the impact of interventions, programs, or policies that may affect multiple forms of violence simultaneously.

3. Identify protective factors across at least two levels of influence (*e.g.*, individual, family, peers, school/workplace, neighborhood, community) that reduce risk for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence or suicidal behavior among populations at elevated risk for engaging in such behaviors.

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of violence. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow the guidelines in the following references: Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

For randomized trials, applicants are encouraged to clearly state how study subjects, whether individuals or groups, were selected, randomized, and followed through the trial. One relevant useful guidance document is Moher D, Schulz KF, Altman D. The CONSORT Statement, JAMA 2001;285:1987–2001.

II. Award Information

Type of Award: Grant.

Mechanism of Support: R49.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,680,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Five to six.

Approximate Average Award: $300,000. (This amount is for the first 12-month budget period and includes both direct and indirect costs. $900,000 total is available over the three year project period.)

Floor of Award Range: None.

Ceiling of Award Range: $300,000. (This amount is for the first 12-month budget period and includes both direct and indirect costs. $900,000 total is available over the three year project period.)

Anticipated Award Date: August 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

Consideration will also be given to current grantees that submit a competitive supplement application requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- 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).

• Political subdivisions of States (in consultation with States).

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.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

It is especially important that the abstract of your grant application (Description, PHS 398 form page 2) reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Special Requirements: 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.

• Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

• Grant applications must demonstrate an overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Research Objectives.''

• Applications must demonstrate effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.

• **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.

Individuals Eligible to Become Principal Investigators:

• A principal investigator who has conducted violence prevention research, published the findings in a peer-reviewed journal, and has specific authority and responsibility to carry out the proposed project.

• The ability of the principal investigator to carry out injury control research projects as defined under Attachment 1 of this program announcement. The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*.

Applications, which do not meet the above requirements, will be considered non-responsive.

Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above 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.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

• Maximum number of pages: Two.
• Font size: 12-point unreduced.
• Paper size: 8.5 by 11 inches.
• Page margin size: One inch.
• Printed only on one side of page.
• Single spaced.
• Written in plain language, avoid jargon.

Your LOI must contain the following information:

• Descriptive title of the proposed research.
• Name, address, e-mail address, and telephone number of the Principal Investigator.
• Names of other key personnel.
• Participating institutions.
• Number and title of this Program Announcement.
• Brief description of the scope and intent of the proposed research work.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. 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*.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

This announcement uses the non-modular budgeting format. Follow the PHS–398 instructions for non-modular budget research grant applications.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those

individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components:

- Statement of the problem.
- Purpose of the proposed research.
- Methods, including study population, data sources and any statistical analyses to be performed.
- Implications for prevention.

The Description (abstract) should answer the following questions:

- Does the Description state the hypothesis?
- Does the Description describe the objectives and specific aims?
- Does the Description state the importance of the research and how it is innovative?
- Does the Description outline the methods that will be used to accomplish the goals?
- Is the language of the Description simple and easy to understand for a broad audience?

You must include a research plan in your application. The research plan should be no more than 25 pages, printed on one side, single spaced, with one half-inch margins, and unreduced 12-point font. The research plan should address activities to be conducted over the entire project period. Use the information in the Research Objectives, Administrative and National Policy Requirements, and Application Review Information sections to develop the application content. The research plan should include the following information:

- The project's focus, a justification for the research proposed, and a description of the scientific basis for the research. The focus should be based on recommendations in ''Healthy People 2010'' (*http://www.healthypeople.gov*) and the ''CDC Injury Research Agenda,'' (*http://www.cdc.gov/ncipc/pub-res/research_agenda/agenda.htm*) and should seek creative approaches that will contribute to a national program for injury control.
- Specific, measurable, and time-framed objectives.
- A detailed plan describing the methods, which will achieve the objectives, including their sequence. A comprehensive evaluation plan is an essential component of the application.
- A description of the principal investigator's role and responsibilities.
- A description of those activities related to, but not supported by, the grant.
- A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.
- An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

For additional help in preparing your grant application please see the ''frequently asked questions'' section on the NCIPC Web page at: *http://www.cdc.gov/ncipc/res-opps/2004pas.htm*.

IV.3. Submission Dates and Times

LOI Deadline Date: December 6, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: February 2, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office (PGO) (not NIH) by 4 p.m. eastern time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and grant application content, 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 you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board (IRB) approvals are in place.
- Grant funds will not be made available to support the provision of direct care.

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.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: NCIPC Extramural Resources Team, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Telephone: 770–488–4037; Fax: 770–488–1662; e-mail: *CIPERT@CDC.GOV.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—PA 05012, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, Address for Express Mail or Delivery Service: 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to improve the control and prevention of disease and injury and to 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 equally 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 review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Is there a prior history of conducting violence prevention injury-related research?

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? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Dissemination: What plans have been articulated for disseminating findings?

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.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the PGO and for responsiveness by NCIPC. 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 announcement will be evaluated for scientific and technical merit by an appropriate peer review panel convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.

The primary review will be a peer review conducted by NCIPC Initial Review Group (IRG). Applications may be subjected to a preliminary evaluation (streamline review) by the IRG to determine if the application is of sufficient technical and scientific merit to warrant further review. NCIPC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by the IRG. These applications will be reviewed for scientific merit using current NIH criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC

Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The ACIPC committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

- The results of the primary review including the application's priority score as the primary factor in the selection process.
- The relevance and balance of proposed research relative to the NCIPC programs and priorities.
- The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.'' (See Attachment 1, Resource Materials. The attachment is posted with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm*.)
- Budgetary considerations.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRG. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRG and the secondary review group.

Continued Funding

Continuation awards made after FY 2005, but within the project period, will be made on the basis of the availability of funds and the following criteria:

- The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated through presentations at work-in-progress monitoring workshops (travel expenses for this annual one-day meeting should be included in the applicant's proposed budget).
- The objectives for the new budget period are realistic, specific, and measurable.
- The methods described will clearly lead to achievement of these objectives.
- The evaluation plan will allow management to monitor whether the methods are effective.
- The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

August 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–3 Animal Subjects Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–22 Research Integrity.

Additional information on AR–1 through AR–22 can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

- AR–25 Release and Sharing of Data.

Starting with the December 1, 2003, receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the ''Research Plan'' section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements). The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count toward the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from

their institutions on issues related to institutional policies, and local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet at: *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. 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. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief summary 2,500 to 4,000 words written in non-scientific [laymen's] terms. The narrative should highlight the findings and their implications for injury prevention programs, policies, environmental changes, *etc*. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, 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: Paul Smutz, Ph.D, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341. Telephone: (770) 488–1508; e-mail: *wsmutz@cdc.gov*.

For questions about peer review, contact: Gwendolyn Cattledge, Ph.D, Scientific Review Administrator, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341. Telephone: (770) 488–1430; e-mail: *gxc8@cdc.gov*.

For financial, grants management, or budget assistance, contact: Pamela Render, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488–2712; e-mail: *PLR3@cdc.gov*.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24618 Filed 11–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Medical Support Notice.

OMB No.: 0970–0222.

Description: The information collected by state IV–D child support enforcement agencies is used to complete the National Medical Support Notice (NMSN) that is sent to employers of employee/obligors and used as a means of enforcing the health care coverage provision in a child support order. Primarily, the information the state child support enforcement agencies use to complete the NMSN is information regarding appropriate persons that is necessary for the enrollment of the child in employment-related health care coverage, such as the employee/obligor's name, address, and Social Security number; the employer's name and address: the name and address of the alternate recipient (child); and the custodial parent's name and address. The employer forwards the second part of the NMSN to the group health plan administrator, which contains the same individual identifying information. The plan administrator requires this information to determine whether to enroll the alternate recipient in the group health plan. If necessary, the employer also initiates withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

Respondents: State and local title IV–D child support enforcement agencies initiate the process of enforcing medical health care coverage for the child by completing and sending the notice to known employers of the noncustodial parents (employee/obligor). Employers and plan administrators are on the receiving end of the notice.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 303.32	54	13,454	.17	123,507

Estimated Total Annual Burden Hours: 123,507.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: October 28, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–24600 Filed 11–3–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Provision of Services in Interstate Child Support Enforcement: Standard Forms.

OMB No.: 0970–0085.

Description: Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended 42 U.S.C. 666 to require State Child Support Enforcement (CSE) agencies to enact the Uniform Interstate Family Support Act (UIFSA) into State law by January 1, 1998. Section 311(b) of UIFSA requires the States to use standard interstate forms, as mandated by Federal law. 45 CFR 303.7 also requires CSE programs to transmit child support case information on standard interstate forms when referring cases to other States for processing. During the OMB clearance process, we are taking the opportunity to make revisions that have been requested by the States.

Respondents: State agencies administering the Child Support Enforcement program under title IV–D of the Social Security Act.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal 1	54	19,278	.25	260,253
Transmittal 2	54	14,458	.08	62,459
Transmittal 3	54	964	.08	4,164
Uniform Petition	54	9,639	.08	41,640
General Testimony	54	11,567	.33	206,124
Affidavit Paternity	54	4,819	.17	44,238
Locate Data Sheet	54	375	.08	1,620
Notice of Controlling Order	54	964	.08	4,164
Registration Statement	54	8,675	.08	37,476

Estimated Total Annual Burden Hours: 662,138.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._/Astrich@omb.eop.gov.*

Dated: October 27, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–24601 Filed 11–3–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1409]

Medical Devices; Reclassification of the Iontophoresis Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity to submit information and comments concerning FDA's intent to initiate a proceeding to reclassify those iontophoresis devices currently in class III (premarket approval) into class II (special controls). An iontophoresis device is a device that is intended to use a direct current to introduce ions of soluble salts or other drugs into the body and induce sweating for diagnostic or other uses. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the proposed rule the agency issued in the **Federal Register** of August 22, 2000 (65 FR 50949) (the August 2000 proposed rule).

DATES: Submit written or electronic comments by February 2, 2005.

ADDRESSES: Submit written comments 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: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 23, 1983 (48 FR 53032), FDA issued a final rule classifying the iontophoresis device into class II (performance standards before the Safe Medical Devices Act of 1990 and now special controls) and class III (premarket approval), depending on its intended use. An iontophoresis device is a device

that is intended to use a direct current to introduce ions of soluble salts or other drugs into the body and induce sweating for diagnostic or other uses. If the iontophoresis device is intended for use in the diagnosis of cystic fibrosis or another intended use and the labeling of the drug intended for use with the device bears adequate directions for the device's use with that drug, the device is categorized as class II. An iontophoresis device that is intended to introduce ions of soluble salts or other drugs into the body for other purposes is categorized as class III.

In the **Federal Register** of August 22, 2000, FDA proposed to amend the physical medicine devices regulations to remove the class III (premarket approval) iontophoresis device identification. FDA proposed this action because it believed that there were no preamendments iontophoresis devices marketed for uses other than those described in the class II identification. FDA expected that manufacturers of those devices currently in class III would be able to relabel their devices to meet the class II identification.

In response to the August 2000 proposed rule, FDA received seven comments. Several comments disagreed with FDA's assertion that no class III preamendments iontophoresis devices existed. Two comments were confused as to whether the requirement that a drug used with an iontophoresis device bear adequate directions for use with that specific device applies to the diagnosis of cystic fibrosis or applies only to other uses. Two comments asserted that the assumption that there are differences in iontophoresis devices that would warrant linking a particular device to a particular drug is in error, and suggested that FDA should consider reclassification of iontophoresis devices into either class I or class II as drug delivery systems comparable to syringes and pumps. In contrast, another comment rejected what it perceived as the implication that all iontophoresis drug delivery systems were the same and that any iontophoresis device could be relabeled to reference any drug approved for iontophoretic administration, whether or not the drug had actually been tested for use with that particular device.

FDA is issuing this document to provide interested persons with an opportunity to submit any new information concerning the safety and effectiveness of the iontophoresis device. After FDA reviews any information that the agency receives in response to this document, FDA will decide whether the agency should go forward with the reclassification of those iontophoresis devices currently in class III and whether a panel meeting is necessary before taking any action.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Any received information may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 25, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–24591 Filed 11–3–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0087]

Draft Guidance for Industry on Listed Drugs, 30-Month Stays, and Approval of Abbreviated New Drug Applications and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers.'' This draft guidance follows the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) (MMA) on December 8, 2003. In part, this guidance satisfies FDA's obligation under that law to clarify the definition of ''listed drug'' for persons who wish to submit a change (i.e., an amendment or supplement) to an abbreviated new drug application (ANDA). The guidance explains when a change to an application should reference a drug different from the drug listed in the original ANDA, requiring the change to be made through an entirely new application.

In addition to the definition of ''listed drug,'' the draft guidance clarifies certain other provisions of the MMA that significantly change the law that existed before the MMA's enactment. These include changes regarding 30-month stays and approval of ANDAs and new drug applications submitted under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (505(b)(2) applications). The draft guidance also explains the effective dates that apply to the MMA's provisions.

DATES: Submit written or electronic comments on the draft guidance by February 2, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Martin Shimer, Center for Drug Evaluation and Research (HFD–615), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855 301–827–5710.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers.'' On December 8, 2003, the MMA was signed into law. Among other things, Title XI of that law, ''Access to Affordable Pharmaceuticals,'' states that guidance will be issued to define the term ''listed drug'' with respect to amendments and supplements to ANDAs. This guidance is necessary because the MMA specifies that, ''An

applicant may not amend or supplement an [ANDA] to seek approval of a drug referring to a different listed drug from the listed drug identified in the application as submitted to the Secretary'' (MMA, Title XI, section 1101(a)(1)(B)). In part, the draft guidance clarifies the definition of ''listed drug'' in the context of ANDAs as directed by the MMA. Portions of the guidance addressing ''listed drug'' are expected to be of use to sponsors who are contemplating submitting an amendment or supplement to an existing ANDA rather than submitting a new application. The draft guidance should aid these sponsors in determining when to reference a different listed drug and, thus, when to submit a new application rather than an amendment or supplement. A situation that is not considered in this guidance is that where a pending ANDA was submitted referencing a petition approved under section 505(j)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(2)(C)), and another application is approved for the product described in the petition before the pending ANDA is approved. FDA has not completed its analysis of this situation, and therefore the draft guidance does not cover it.

In addition to the definition of ''listed drug,'' the draft guidance clarifies certain other significant changes made by the MMA to provisions of the act that were originally added by the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (Hatch-Waxman). These include changes made by the MMA with respect to the availability and termination of 30-month stays of approval on ANDAs and 505(b)(2) applications under section 505(j)(5)(B)(iii) and 505(c)(3)(C) of the act, respectively, and to requirements for notice of patent certifications described by section 505(b)(2)(A)(iv) and 505(j)(2)(A)(vii)(IV) of the act (paragraph IV certifications). The draft guidance also clarifies the applicability of certain changes made by the MMA regarding the period described by section 505(j)(5)(B)(iv) of the act during which ANDAs with paragraph IV certifications that were not the first to be submitted cannot be approved (180-day exclusivity). Finally, this guidance explains the effective dates that apply to the MMA's amendments. FDA is aware that these changes are complex and include significant departures from previous law. The agency therefore wishes to provide guidance to industry to clarify these amendments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the definition of ''listed drug'' for amendments and supplements to ANDAs, and on 30-month stays and certain other matters related to the approval of ANDAs and 505(b)(2) applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments 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. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24675 Filed 11–3–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16860]

Gulf Landing, LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The U.S. Coast Guard (USCG) and the U.S. Maritime Administration (MARAD) will hold a public hearing to receive information relevant to the issuance or denial of the requisite federal license for the proposed Gulf Landing, LLC (Gulf Landing) Deepwater Port project. The proposed Gulf Landing Deepwater Port would be located in West Cameron Lease Block Number 213, approximately 38 miles south of Cameron, Louisiana. We encourage interested individuals and organizations to attend the public hearing and submit comments. We also seek comments from anyone unable to attend the public hearing. In conjunction with the public hearing, the USCG and MARAD will also hold an informational open house regarding the proposed Gulf Landing Deepwater Port project.

DATES: The public hearing will be held on Thursday, November 18, 2004, from 5 to 7 p.m., in New Orleans, Louisiana. The informational open house will be held on Thursday, November 18, 2004, from 3 to 4:30 p.m., at the same location in New Orleans, Louisiana. The public hearing will continue beyond 7 p.m. if necessary to ensure all individuals present at that time who wish to comment have an opportunity to do so.

Comments intended for inclusion in the public docket [USCG–2004–16860] must reach the Docket Management Facility on or before January 3, 2005.

ADDRESSES: The public hearing and informational open house will be held at the following location: Hyatt Regency New Orleans Hotel, Poydras at Loyola Avenue, New Orleans, Louisiana 70113, telephone 504–561–1234.

You may submit comments identified by Coast Guard docket number USCG–2004–16860 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, U.S. Department of Transportation, 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.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, the Gulf Landing Deepwater Port license application, or the public hearing or informational open house, contact LCDR Derek Dostie, U.S. Coast Guard at (202) 267–0662 or *ddostie@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M.

Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

Whether or not you attend the public hearing or informational open house, we encourage you to submit written comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2004–16860], indicate your specific concern, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery 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 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 that 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.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number USCG–2004–16860. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Hearing/Informational Open House

The Coast Guard and the Maritime Administration will hold a public hearing on Thursday, November 18, 2004 from 5 to 7 p.m., at the Hyatt Regency New Orleans Hotel, Poydras at Loyola Avenue, New Orleans, Louisiana 70113, telephone 504–561–1234. The informational open house will be held on Thursday, November 18, 2004 from 3 p.m. to 4:30 p.m., at the same location in New Orleans, Louisiana. We invite the public and representatives of interested agencies to attend and provide comments on the proposed license application. If you plan to attend the public hearing or informational open house and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**. We ask that you make such requests at least three (3) business days before the scheduled meeting. Include a contact person's name and telephone number, your specific need, and (for persons with hearing impairments) a TDD number.

Proposed Deepwater Port Background Information

The application plan calls for construction of a deepwater port and associated anchorages in an area situated in the Gulf of Mexico, approximately 38 miles south of Cameron, Louisiana in West Cameron Lease Block Number 213, in water depth of approximately 55 feet, and adjacent to an existing shipping fairway servicing the Calcasieu River and area ports.

Gulf Landing's terminal would be capable of storing up to 200,000 cubic meters of LNG. On average, Gulf Landing expects the terminal would vaporize and deliver 1 billion cubic feet per day (Bcfd) of natural gas to the pipelines; with a peak daily send-out rate of 1.2 Bcfd. Gulf Landing proposes to construct, own, and operate up to 5 offshore pipelines, ranging from 16 to 36 inches in diameter that would traverse a combined 65.7 nautical miles. The pipelines would interconnect with existing natural gas pipelines located in the Gulf of Mexico. Gas would then be delivered to the onshore national pipeline grid for delivery to any consumption market east of the Rocky Mountains.

The project would consist of two concrete gravity base structures (GBSs) housing the LNG containment facilities, along with topside unloading and vaporization equipment, living quarters, and a ship berthing system.

The terminal would be able to receive LNG carriers with cargo capacities between 125,000 and 200,000 cubic meters and unload up to 135 LNG carriers per year. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of cargo during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, subsequent vaporization of the LNG across heat exchanging equipment, and send-out through custody transfer metering to the gas pipeline network. No gas conditioning is required for the terminal since the incoming LNG would be pipeline quality.

License Application Background Information

The Gulf Landing Deepwater Port license application was submitted to the Secretary of Transportation on November 3, 2003. The license application calls for construction of the Gulf Landing Deepwater Port to be located in West Cameron Lease Block Number 213 approximately 38 miles south of Cameron, Louisiana. Additional information concerning the contents of the application can be found online at *http://dms.dot.gov* under docket number USCG–2004–16860, or in the notice of application published in the **Federal Register** at 69 FR 14 (Jan. 22, 2004), pages 3165–3167. This public hearing is being held pursuant to 33 U.S.C. 1504(g) to receive information relevant to the issuance or denial of the requisite federal license for the proposed Gulf Landing, LLC Deepwater Port project.

Procedural

The public meeting will be structured to provide interested members of the public with an opportunity to present comments regarding the license application. Speakers at the public meeting will be recognized in the following order: elected officials, public agencies, individuals or groups in the sign-up order, and anyone else who wishes to speak. Speakers may be asked to limit their oral comments to five (5) minutes in order to afford everyone an opportunity to speak. Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**, any time prior to the hearing. Written statements and exhibits may be submitted in place of or in addition to

oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered before or during the hearing, or they may be submitted for up to 45 days following the date of the hearing to the Docket Management Facility listed under **ADDRESSES**.

Dated: October 29, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Richard Lolich,

Acting Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–24642 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for the Laysan Duck (*Anas laysensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the Draft Revised Recovery Plan for the Laysan Duck (*Anas laysanensis*) for public review and comment.

DATES: Comments on the draft revised recovery plan must be received on or before January 3, 2005.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850 (telephone: (808) 792–9400). Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address. An electronic copy of the draft revised recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Holly Freifeld, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period on each new or revised recovery plan. Substantive technical comments may result in changes to a recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal agency or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The Laysan duck is federally listed as endangered and is also listed as endangered by the State of Hawaii. This species currently is found only on the small island of Laysan in the Northwestern Hawaiian Islands, but it was also known historically from the island of Lisianski, and bones or fossils have been found in the Main Hawaiian Islands on Hawaii, Maui, Molokai, Oahu, and Kauai, indicating it previously had a much wider distribution. The Main Hawaiian Island populations of this species likely were extirpated by nonnative mammalian predators around the time of human settlement. The Laysan duck's current population is estimated to be 459 birds, but its numbers on Laysan have fluctuated from 7 to 688 adult birds during the past century. This species uses all available habitats on Laysan, including coastal areas, a hypersaline lagoon, mudflats, and densely vegetated upland areas. It eats a variety of arthropods, sometimes seeds, leaves, and algae, and at certain seasons consumes large quantities of aquatic midge larvae. The primary threats to this species are its small population size and restricted range, stochastic fluctuations in food availability that cause its numbers to vary, potential inbreeding depression and disease susceptibility, and storms that could cause direct mortality and destroy the duck's habitat on the single low-lying island to which it is currently restricted.

The recovery goals are to conserve and recover the Laysan duck to the point where it can be downlisted (reclassified from endangered to threatened status) and eventually to delist the species (remove it from the List of Endangered and Threatened Wildlife and Plants). The objectives by which these goals will be met are to protect the existing population on Laysan and reestablish additional viable populations of the duck in areas that are managed to be free of predators. To accomplish these objectives, this recovery plan outlines high priority tasks that fall generally into four categories. First, the duck population on Laysan must be monitored and its habitat restored and protected. Second, wild juvenile ducks must be translocated to appropriate predator-free Northwestern Hawaiian Islands and eventually to sites in the Main Hawaiian Islands where predators are effectively controlled. Translocated populations must be closely monitored and managed to enhance population growth. Third, a captive propagation program must be initiated, with the aim of producing Laysan ducks for release primarily at predator-controlled Main Hawaiian Island sites. Fourth, further research must be undertaken on the life history, demography, disease susceptibility, and genetics of the Laysan duck to refine the recovery criteria and management techniques for this species.

Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 12, 2004.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–24619 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–04–1320–EL–P; MTM 93833]

Notice of Invitation—Coal Exploration License Application MTM 93833

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Western Energy Company in a program for the exploration of coal deposits owned by the United States of America in lands located in Treasure County, Montana, encompassing 320.00 acres.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management (BLM), Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

SUPPLEMENTARY INFORMATION: The lands to be explored for coal deposits are described as follows: T. 2 N., R. 38 E., P.M.M., Sec. 14: E½.

Any party electing to participate in this exploration program shall notify, *in writing,* both the State Director, BLM, P.O. Box 36800, Billings, Montana 59107–6800, and Western Energy Company, P.O. Box 99, Colstrip, Montana 59323. Such written notice must refer to serial number MTM 93833 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press,* Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Western Energy Company, is available for public inspection at the BLM, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

Dated: September 30, 2004.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 04–24666 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PH; G4–0288]

Notice of Call for Nominations for the John Day-Snake Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is requesting public nominations to fill the unexpired term of two positions on the John Day-Snake-RAC. The RAC provides advice and recommendations to BLM on land use planning and management of the public lands in northeast Oregon, Southeast Washington, and that portion of Idaho within the Hells Canyon National Recreation Area. BLM will consider public nominations until December 20, 2004.

DATES: Send all nominations to the appropriate BLM State Office by no later than December 20, 2004.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** for the location to send your nominations.

FOR FURTHER INFORMATION CONTACT: Pam Robbins, U.S. Department of the Interior, Bureau of Land Management, Oregon State Office, 333 SW. First Avenue OR–912, Portland, OR 97204–3420; 503–808–6306.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) 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 consistent with the requirements of Federal Advisory Committee Act (FACA). Members serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784.b. The unexpired terms to be filled are category three—Indian tribes within or adjacent to the RAC, and employee of a State agency responsible for management of natural resources. The current term expiration for the tribal representative is September 19, 2007; for the State employee, it is September 19, 2006. Individuals may nominate themselves or others to serve on the RAC. Nominees must be residents of Oregon, Washington, or Idaho, the states in which the RAC has jurisdiction. BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations,
—A completed background information nomination form,
—Any other information that speaks to the nominee's qualifications.

Nomination forms are available from Pam Robbins, P.O. Box 2965, 333 SW. First Avenue, Portland, OR 97208–2965. Completed applications should be sent to the same address. Internet users may download the form from: *http://www.or.blm.gov/johndaysnake-RAC/form-nomination.pdf.*

Dated: September 23, 2004.

James G. Kenna,

Associate State Director, Oregon/Washington BLM.

[FR Doc. 04–24668 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–04; NMNM 96135]

Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 96135

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 96135 for lands in San Juan County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 2004, the date of termination.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the

cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: September 17, 2004.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 04–24670 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU76457, UTU76458, UTU76459, UTU76460, UTU76462, UTU76703, UTU76704, UTU77110 and UTU77500]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, Utah

September 24, 2004.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases UTU76457, UTU76458, UTU76459, UTU76460, UTU76462, UTU76703, UTU76704, UTU77110 and UTU77500 for lands in Juab County, Utah, was timely filed and required rentals accruing from the date of termination, have been paid.

FOR FURTHER INFORMATION CONTACT: Teresa Catlin, Acting Chief, Branch of Fluid Minerals at (801) 539–4122.

SUPPLEMENTARY INFORMATION: The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU77110, effective April 1, 2003, leases UTU76457, UTU76458, UTU76459, UTU76460 and UTU76462, effective July 1, 2003, leases UTU76703, UTU76704, and UTU77500, effective October 1, 2003, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Teresa Catlin,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 04–24667 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144596]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW144596 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144596 effective April 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Theresa M. Stevens,

Acting Chief, Fluid Minerals Adjudication.

[FR Doc. 04–24664 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW130117]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW130117 for lands in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Chief Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130117 effective September 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–24665 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW130110]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW130110 for lands in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Chief Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130110 effective September 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–24669 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144595]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW144595 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144595 effective April 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Theresa M. Stevens,

Acting Chief, Fluid Minerals Adjudication.

[FR Doc. 04–24671 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW130635]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW130635 for lands in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Chief Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130635 effective November 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–24673 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Wednesday, December 8, 2004 at 9 a.m. until 3:30 p.m., at the Alabama Department of Transportation, 1409 Coliseum Boulevard in Montgomery Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Pub. L. 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Review of last meeting Minutes

(B) Subcommittee Review & Nominations

(C) 40th Anniversary Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Person wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334.727.6390 (phone), 334.727.4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Dated: October 6, 2004.

Catherine F. Light,

Selma to Montgomery National Historic Trail Superintendent.

[FR Doc. 04–24609 Filed 11–3–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Criminal Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Exhibit A to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), Criminal Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on Volume 69, Number 148, page 46568 on August 3, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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 submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit A.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Form CRM–157. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required under the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must set forth the information required to be disclosed concerning each foreign principal, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents is 164 who will complete a response within 29 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 80 hours annually.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: October 29, 2004.

Brenda E. Dyer,

Clearance Officer, Department of Justice.

[FR Doc. 04–24611 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Robert Hummel, et al.,* Case No. 00 C 5184, was lodged with the United States District Court for the Northern District of Illinois on October 25, 2004. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands without a permit.

The proposed Consent Decree requires the defendants to: (1) pay a civil penalty, (2) remove and re-route a 500′ sewer line that was illegally placed through a wetland, and (3) restore the impacted wetland. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Robert Hummel, et al.* Case No. 00 C 5184, including the USAO #1999V011338.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. 04–24592 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), and the Park System Resource Protection Act (''PSRPA'')

Under the policy set out at 28 CFR 50.7, notice is hereby given that on October 15, 2004, the United States lodged with the United States District Court for the Northern District of Iowa a proposed consent decree (''Consent Decree'') in the case of *United States*

and State of Iowa v. *City of Postville, Iowa,* Civ. A. No. C04–1040–LRR. The Consent Decree pertains to the Publicly Owned Treatment Works (''POTW'') and the National Pollutant Discharge Elimination System (''NPDES'') Permit of the City of Postville, Iowa (''City'').

The Consent Decree would resolve claims in a Complaint filed, simultaneously with the lodging of the Consent Decree, by the United States and the State of Iowa (''State'') against the City for violations at its POTW of sections 301, 307 and 402 of the Clean Water Act (''CWA''), 33 U.S.C. 1311, 1317 and 1342, and the City's NPDES Permit. The Consent Decree would also resolve claims by the United States and the State for natural resource damages under Section 311(f) of the CWA, 33 U.S.C. 1321(f); section 107 of CERCLA, 42 U.S.C. 9607; and PSRPA, 16 U.S.C. 19jj. In addition, the Consent Decree would resolve CWA claims filed in a separate Complaint by an Iowa citizens' group, the Northeast Iowa Citizens for Clean Water (''NICCWA'').

The Consent Decree requires the City to perform injunctive relief including continuous monitoring and reporting of discharges into a nearby river, to pay civil penalties for CWA violations and monies for natural resource damages to the Unites States and the State, and to pay attorneys' fees and costs to NICCWA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Iowa* v. *City of Postville, Iowa,* DOJ Ref. No. 90–5–1–1–08078.

The Consent Decree may be examined at the offices of the United States Attorney, Northern District of Iowa, 401 First Street, SE., Room 400, Cedar Rapids, IA 52401, and at the offices of U.S. EPA Region 7, 901 North 5th Street, Kansas City, KS 66101.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 415–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–24593 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Import/Export Declaration: Precursor and Essential Chemicals—DEA Form 486.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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 submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Import/Export Declaration: Precursor and Essential Chemicals—DEA Form 486.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 486. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Chemical Diversion and Trafficking Act of 1988 requires those persons who import/export certain chemicals to notify DEA 15 days prior to shipment. The information will be used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* DEA Form 486: The estimated total number of respondents is 333. DEA estimates that 223 persons will submit the DEA Form 486 as needed to report imports and exports of listed chemicals within approximately 12 minutes to complete DEA Form 486. DEA estimates that 110 persons will submit quarterly reports regarding imports of acetone, 2–Butanone, and toluene, within approximately 30 minutes to complete each quarterly report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 29, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24613 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Poposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Controlled Substances Import/Export Declaration—DEA Form 236.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* Controlled Substances Import/Export Declaration—DEA Form 236.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 236. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The DEA–236 provides the DEA with control measures over the importation and exportation of controlled substances as required by United States drug control laws and international treaties.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that it takes 30 minutes to complete each form. DEA estimates that 224 respondents respond as needed to this collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection has an annual burden of 2,170.5 hours.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 29, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24614 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Records and Reports of Registrants.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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 submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Reports of Registrants.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Business or other for-profit. Other: Not-for-profit institutions, federal government, state, local or tribal government. Abstract: This information is needed to maintain a closed system of distribution by requiring the individual practitioner to keep records of the dispensing and administration of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents is 101,000. The estimated time for each practitioner to maintain the necessary records is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This information collection creates an annual burden of 50,500 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 29, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24615 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 137, page 43016 on July 19, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 6, 2004. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Admin Form 7390/6. U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Government. The form is used by State Government to submit Annual Performance Report data about claims for victim compensation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 53 respondents will complete each form within 2 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 106 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 29, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24610 Filed 11–3–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 27, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on (202) 693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs under Title I, Section 167 of the Workforce Investment Act.

OMB Number: 1205–0425.

Frequency: Quarterly; Annually.

Affected Public: State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 53.

Number of Annual Responses: 42,833.

Required section 167 activity	NFJP form No.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hours
Plan Narrative		53	1	53	20	1,060
Data Record		53	[1]	42,250	2	84,500
Report from Data Record		53	4	212	1	212
Budget Information Summary	ETA 9093	53	1	53	15	795
Program Planning Summary	ETA 9094	53	1	53	16	848
Program Status Summary	ETA 9095	53	4	212	7	1,484
Totals		53	11	42,833	61	88,899

[1]On occasion.

Total burden hours: 88,899.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This collection of information relates to the operation of employment and training programs for Migrant and Seasonal Farmworkers under Title I, section 167 of the Workforce Investment Act (WIA). It also contains the basis of the new performance standards system for WIA section 167 grantees. The burden estimates for this collection include the Adult Services Program authorized under section 167.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–24657 Filed 11–3–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 29, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Forms: OSHA Form 300; OSHA Form 300A; and OSHA Form 301.

Frequency: On occasion and Annually.

Type of Response: Reporting; Recordkeeping; and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; and State, Local, or Tribal Government.

Number of Respondents: 1,484,000.

Information collection requirement	Annual responses	Estimated average response time (hours)	Annual burden hours
29 CFR 1904.4—Complete OSHA Form 301*	1,546,160	0.367	567,441
29 CFR 1904.4—Line entry on OSHA Form 300 (other than needlesticks)	3,827,600	0.233	891,831
29 CFR 1904.8—Line entry on OSHA 300 for needlesticks	590,000	0.083	48,970
29 CFR 1904.29(b)(6)—Entry on privacy concern case confidential list	641,000	0.050	32,050
29 CFR 1904.32—Complete, certify, and post OSHA Form 300A	1,484,000	0.967	1,435,028
29 CFR 1904.35—Employee Access to OSHA Form 300	137,000	0.083	11,371
29 CFR 1904.35—Employee Access to OSHA Form 301	273,000	0.083	22,659

Information collection requirement	Annual responses	Estimated average response time (hours)	Annual burden hours
29 CFR 1904.39—Report fatalities/catastrophes	2,000	0.250	500
Learning Basics of Recordkeeping System—turnover of personnel	296,800	1.000	296,800
29 CFR 1904.38—Request for variance	0	0.000	0
Total	8,797,560	.....	3,306,650

* Estimate based on 35% of cases recorded on OSHA Form 300.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The OSHA Act and 29 CFR part 1904 require certain employers to maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provides information to employers and employees of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–24658 Filed 11–3–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: 1210–0106.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Number of Respondents: 10.

Number of Annual Responses: 200.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 10 hours.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $100.

Description: Under 29 CFR 2590.712(f)(2), a group health plan wishing to elect the one percent exemption must calculate their increased costs according to certain rules, maintain group health plan claims and administrative expense records in such a way that they can be used to demonstrate the applicability of the one percent cost increase exemption as defined in the interim final rules, and that a summary of that information can be provided at the request of participants and beneficiaries, or their representative at no charge.

Group health plans use this information to obtain the benefits of the exemption from the requirement that they provide for parity between mental health benefits and medical/surgical benefits. Participants and beneficiaries use the information to be informed of the benefits available to them under their group health plans, and to verify or dispute the applicability of the exemption which may serve to limit benefits which would otherwise be available to them.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–24659 Filed 11–3–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 26, 2004.

The Department of Labor (DOL) and the Pension Benefit Guaranty Corporation have submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL) or the Pension Benefit Guaranty Corporation (PBGC). To obtain documentation from DOL, contact Darrin King at 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.* To obtain documentation from PBGC, contact Harold J. Ashner on 202–326–4024 (this is not a toll-free number) or e-mail: *ashner.harold@pbgc.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA) and Pension Benefit Guaranty Corporation (PBGC), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Type of Review: Extension of a currently approved collection.

Title: Annual Information Return/Report.

Form Number: Form 5500 and Schedules.

Frequency: On occasion and Annually.

Type of Response: Reporting; Recordkeeping; and Third-party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Individuals or households; and Farms.

Paperwork Reduction Act Burden Breakout by Agency:

Agency	EBSA	PBGC
OMB Number	1210–0110	1212–0057
Number of Respondents	837,755	28,900
Number of Annual Responses	837,755	28,900
Total Burden Hours	1,948,529	2,373
Total Annualized capital/startup costs	$0	$0
Total Annual Costs (operating/maintaining systems or purchasing services)	$663,870,000	$1,737,078

Average response time: Varies considerably by plan size. Large plans may spend considerably more time reporting than small plans.

Description: Under Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended, and the Internal Revenue Code of 1986, as amended (the Code), pension and other employee benefit plans are generally required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements can be satisfied by filing the Form 5500 in accordance with its instructions and related regulations. The Form 5500 is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 is a compliance and research tool for EBSA, PBGC, and the IRS, and a source of information for other federal agencies, Congress, and the private sector for use in assessing employee benefit, tax, and economic trends and policies.

Ira L. Mills,

Departmental Clearance Officer, U.S. Department of Labor.

[FR Doc. 04–24660 Filed 11–3–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Proposed Collection; Request for Comments: VETS 300, SF 269A, and Manager's Report

AGENCY: Veterans' Employment and Training Service, Labor.

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 the proposed continued collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. The Paperwork Reduction Act 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, VETS is soliciting comments concerning the proposed extension of the information collection request for the Manager's Report and replacement of the VETS–300, Quarterly Financial Status Reports with the OMB approved Standard Form (SF) 269A Reports for cost information collection.

DATES: Comments are to be submitted by January 3, 2005.

ADDRESSES: Comments are to be submitted to Paul Robertson, Regulatory Specialist, Office of Agency Management and Budget, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1312, 200 Constitution Ave., NW., Washington, DC 20210. Electronic mail (e-mail) is the preferred method for submitting comments. Comments must be clearly identified as pertaining to this **Federal Register** Notice. E-mail may be sent to *robertson.paul@dol.gov.* Written comments are limited to 10 pages or fewer and may also be transmitted by facsimile to (202) 693–4755 (this is not a toll free number). Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be

acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4708 (VOICE) or (202) 693–4753 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Contact Pamela Langley, Interim Chief, Division of Employment and Training Programs, VETS, at the Department of Labor, Room S–1312, 200 Constitution Avenue, NW., Washington, DC 20210, or by e-mail at *langley.pamela@dol.gov.* Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by contacting Pamela Langley at (202) 693–4708.

SUPPLEMENTARY INFORMATION:

I. Background

Each State Workforce Agency Office has been required to submit the VETS 300 and Manager's Reports on a quarterly basis, with one additional VETS 300, Final Fiscal Year Report. With the passage of Public Law 107–288, the Jobs for Veterans Act of 2002, enacted November 7, 2002, the quarterly and final VETS–300 Cost Accounting Reports are no longer required to be submitted. The OMB approved SF 269A Quarterly Financial Report contains sufficient information to replace the VETS–300 Reports. The VETS–300 reports will, therefore, be eliminated when the current form expires in December of 2004.

Title 38 U.S.C. requires a report on employment and training services provided to veterans and eligible persons by the local employment service delivery system. This report is provided to the Director for Veterans' Employment and Training (DVET) each fiscal quarter. It addresses the service delivery point's performance and compliance with Federal law and regulations on the prioritization and provision of services to veterans and eligible persons. Section V. G. of the Special Grant Provisions and Veterans' Program Letter 09–03, require this report to include, as a minimum, an analysis of compliance with applicable measures of service or standards of performance and the quantity, quality and character of services provided to veterans and eligible persons, to include Vocational Rehabilitation and Employment activity.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed three-year extension of the information collection request for the Manager's Report. The Department of Labor 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.

III. Current Actions

This notice requests extended approval from OMB for the quarterly collection of information, electronic or mechanical submission, and other paperwork requirements of the Manager's Report on Services to Veterans.

Type of Review: Extension of a currently approved collection.

Agency: Veterans' Employment and Training Service.

Title: VETS 300, Manager's Report and SF 269A.

OMB Number: 1293–0009.

Affected Public: State, Local, and Tribal Governments.

Reports	Number of respondents	Number of responses	Frequency	Average (response time (hours)	Estimate burden hours
Manager's Report	1,600	6,400	Quarterly	4.00	25,600
SF 269A	53	530	Quarterly	.30	159
Total	1,653	6,930			25,759

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the agency's request for OMB approval of the information collection request. Comments will become a matter of public record.

Dated at Washington, DC, this 29th day of October, 2004.

Frederico Juarbe Jr.,

Assistant Secretary.

[FR Doc. 04–24640 Filed 11–3–04; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–120]

NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Monday, November 8, 2004, 8:30 a.m. to 6 p.m., and Tuesday, November 9, 2004, 8 a.m. to 4 p.m.

ADDRESSES: Inn and Conference Center, University of Maryland, 3501 University Boulevard East, Adelphi, Maryland 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Salamon, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0441, *michael.h.salamon@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Universe Division News/Update
—NASA Roadmapping Progress
—James Webb Space Telescope Update
—Deep Space Network Future Plans
—Astronomy and Physics Working Group

—Interagency Planning for the World Year of Physics (2005)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–24586 Filed 11–3–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–121]

NASA Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Monday, November 8, 2004, 8:30 a.m. to 6 p.m., and Tuesday, November 9, 2004, 8 a.m. to 6 p.m.

ADDRESSES: Inn and Conference Center, University of Maryland, 3501 University Boulevard East, Adelphi, Maryland 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Eric P. Smith, Science Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2439, *eric.p.smith@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Universe Division News/Update.
- NASA Roadmapping Progress.
- James Webb Space Telescope Update.
- Deep Space Network Future Plans.
- Astronomy and Physics Working Group.
- Terrestrial Planet Finder Update.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–24587 Filed 11–3–04; 8:45 am]

BILLING CODE 7510–13–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in the PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of the PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be submitted by January 3, 2005.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/paperwork*, or by fax to (202) 326–4112. The PBGC will make all comments available on its Web site at *http://www.pbgc.gov*.

Copies of the collections of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.) The regulations on multiemployer plans can be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, (202) 326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved and issued control numbers for the collections of information, described below, in the PBGC's regulations relating to multiemployer plans. The PBGC intends to request that OMB extend its approval of these collections of information for three years.

The PBGC is soliciting public comments to—

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should identify the specific part number(s) of the regulation(s) they relate to.

The collections of information for which the PBGC intends to request extension of OMB approval are as follows:

1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB Control Number 1212–0020)

Section 4041A(f)(2) of ERISA authorizes the PBGC to prescribe reporting requirements for and other ''rules and standards for the administration of'' terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by the PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to the PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is

closing out to give notices to participants regarding the election of alternative forms of benefit distribution and to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.

The PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. The PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

The PBGC estimates that plan sponsors each year (1) submit notices of termination for 10 plans, (2) distribute election notices to participants in 5 of those plans, and (3) submit requests to pay benefits or benefit forms not otherwise permitted for 1 of those plans. The estimated annual burden of the collection of information is 19.2 hours and $12,873.

2. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow the PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to the PBGC about the rules, the plan, and the industry in which the plan operates. The PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

The PBGC estimates that at most 1 plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $4,400.

3. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from the PBGC. Plans and the PBGC use the information to determine whether employers qualify for variances.

The PBGC estimates that each year, 11 employers submit, and 11 plans respond to, variance requests under the regulation, and 2 employers submit variance requests to the PBGC. The estimated annual burden of the collection of information is 1 hour and $4,881.

4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)

Section 4207 of ERISA allows the PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that each year, 100 employers submit, and 100 plans respond to, applications for abatement of complete withdrawal liability, and 1 plan sponsor requests approval of plan abatement rules from the PBGC. The estimated annual burden of the collection of information is 25.5 hours and $27,500.

5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes the PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. The PBGC uses the information in such a request to determine whether the amendment should be approved.

The PBGC estimates that each year, 1,000 employers submit, and 1,000 plans respond to, applications for abatement of partial withdrawal liability and 1 plan sponsor requests approval of plan abatement rules from the PBGC. The estimated annual burden of the collection of information is 250.5 hours and $275,000.

6. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires the PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to the PBGC by a plan seeking such approval. The PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and the PBGC.

The PBGC estimates that 5 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 10 hours.

7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that the PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' ERISA section 4209(c) deals with an employer's liability for *de minimis*

amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to the PBGC so that it can monitor the plan, and they help the PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

The PBGC estimates that there is at most 1 mass withdrawal and 1 substantial withdrawal per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to the PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to the PBGC that assessments have been made. (For a mass withdrawal, there are 2 assessments and 2 certifications that deal with 2 different types of liability. For a substantial withdrawal, there is 1 assessment and 1 certification (combined with the withdrawal notice to the PBGC).) The estimated annual burden of the collection of information is 4 hours and $7,148.

8. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, the PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting the PBGC's approval of an amendment. The PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

The PBGC estimates that 3 plan sponsors submit approval requests per year under this regulation. The estimated annual burden of the collection of information is 1.5 hours.

9. Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231) (OMB Control Number 1212–0022)

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give the PBGC 120 days' notice of the transaction and provides that if the PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

The PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The PBGC estimates that there are 35 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 8.75 hours and $7,657.

10. Notice of Insolvency (29 CFR Part 4245) (OMB Control Number 1212–0033)

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a ''notice of insolvency'' to the PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a ''notice of insolvency benefit level'' to the same parties.

This regulation establishes the procedure for giving these notices. The PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

The PBGC estimates that 1 plan sponsor gives notices each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $3,746.

11. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB Control Number 1212–0032)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from the PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to the PBGC and to participants and beneficiaries and, if necessary, to apply to the PBGC for financial assistance.

The PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

The PBGC estimates that plan sponsors each year give benefit reduction notices for 2 plans and give notices of insolvency benefit level and annual updates, and submit requests for financial assistance, for 28 plans. Of those 28 plans, the PBGC estimates that plan sponsors each year give notices of insolvency for 4 plans. The estimated annual burden of the collection of information is 1 hour and $286,659.

Issued in Washington, DC, this 29th day of October, 2004.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 04–24650 Filed 11–3–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–06549]

Issuer Delisting; Notice of Application of American Science and Engineering, Inc. To Withdraw Its Common Stock, $.66⅔ Par Value, From Listing and Registration on the American Stock Exchange LLC

October 29, 2004.

On October 1, 2004, American Science and Engineering, Inc., a Massachusetts corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

stock, $.66⅔ par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer represents that the Board of Directors (''Board'') of the Issuer approved a resolution on July 28, 2004 to withdraw the Issuer's Security from listing on the Amex and to list the Security on Nasdaq National Market (''Nasdaq''). The Issuer states it would be in the best interest of the Issuer to list the Security solely on Nasdaq because Nasdaq should offer increased visibility and liquidity in worldwide financial markets, is perceived by many investors as the premier market for technology companies like the Issuer, and should provide improved and enhanced investor services for the Issuer's stockholders. In addition, the Issuer believes it is advisable and desirable to remove the listing of its Security on the Amex and to list the Security on Nasdaq. The Issuer states that it was scheduled to list its Security on the Nasdaq on October 6, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Massachusetts, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 23, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–06549 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–06549. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–3002 Filed 11–3–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26646]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 29, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

The Legacy Funds, Inc. [File No. 811–9495]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 16, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $6,600 incurred in connection with the liquidation were paid by applicant and Ingalls & Snyder LLC, applicant's investment adviser.

Filing Dates: The application was filed on September 16, 2004, and amended on October 22, 2004.

Applicant's Address: 61 Broadway, New York, NY 10006.

Liberty Stein Roe Funds Trust [File No. 811–7997]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 7, 2003, all of the applicant's shareholders had redeemed their shares, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 30, 2004, and amended on October 22, 2004.

Applicant's Address: One Financial Center, Boston, MA 02111.

SAL Trust Preferred Fund I [File No. 811–9421]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant currently has 11 remaining shareholders, who hold their shares in certificated form. Continental Stock Transfer & Trust Company, applicant's paying and transfer agent, will distribute the assets to applicant's remaining shareholders upon receipt of a shareholder's share certificate. Any shareholder assets that remain unclaimed after the applicable holding period will escheat to the shareholder's state of residence. Expenses of approximately $40,000 incurred in connection with the liquidation will be paid by the bank holding companies that had issued certain redeemable trust preferred securities held by applicant.

Filing Dates: The application was filed on October 1, 2004, and amended on October 20, 2004.

Applicant's Address: 800 Shades Creek Parkway, Suite 700, Birmingham, AL 35209.

The Lutheran Brotherhood Family of Funds [File No. 811–1467]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 16, 2004, applicant transferred its assets to Thrivent Mutual Funds, based on net asset value. Expense of $2,191,200 incurred in connection with the reorganization were paid by Thrivent Investment Management Inc., applicant's investment adviser.

Filing Dates: The application was filed on September 30, 2004, and amended on October 20, 2004.

Applicant's Address: 625 Fourth Ave. South, Minneapolis, MN 55415.

Small-Cap Value Portfolio [File No. 811–9915]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 30, 2004, and amended on October 20, 2004.

Applicant's Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

SunAmerica Strategic Investment Series, Inc. [File No. 811–9169]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 20, 2004, two of applicant's seven series made a liquidating distribution to their shareholders, based on net asset value. On the same date, applicant's five remaining series were merged into the corresponding series of SunAmerica Focused Series, Inc. and SunAmerica Equity Funds, based on net asset value. Expenses of $336,000 incurred in connection with the liquidation and reorganization were paid by AIG SunAmerica Asset Management Corp., applicant's investment adviser.

Filing Dates: The application was filed on September 21, 2004, and amended on October 20, 2004.

Applicant's Address: Harborside Financial Center, 3200 Plaza 5, Jersey City, NJ 07311.

ANZ Exchangeable Preferred Trust [File No. 811–8865]

ANZ Exchangeable Preferred Trust II [File No. 811–9069]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 12, 2003, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Each applicant incurred $5,000 in expenses in connection with its liquidation.

Filing Date: The applications were filed on October 4, 2004.

Applicants' Address: c/o The Bank of New York, 101 Barclay St., New York, NY 10286.

Lened, Inc. [File No. 811–3273]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 27, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $28,000 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 29, 2004, and amended on October 13, 2004.

Applicant's Address: 17 Academy St., Newark, NJ 07960.

Galaxy Fund II [File No. 811–6051]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 9, 2002, each series of applicant had transferred its assets to a corresponding series of Liberty Funds Trust IV or Liberty Funds Trust V, based on net asset value. Expenses of $108,500 incurred in connection with the reorganization were paid by Columbia Management Group, Inc., the parent company of applicant's investment adviser.

Filing Dates: The application was filed on July 29, 2004, and amended on October 8, 2004.

Applicant's Address: One Financial Center, Boston, MA 02111.

The Watchdog Fund Trust [File No. 811–21366]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 14, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $3,770 incurred in connection with the liquidation were paid by applicant's investment adviser, H Team Capital, LLC.

Filing Date: The application was filed on September 28, 2004.

Applicant's Address: 650 Fifth Ave., 6th Floor, New York, NY 10019.

NAB Exchangeable Preferred Trust [File No. 811–8939]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 30, 2004.

Applicant's Address: c/o The Bank of New York, 101 Barclay St., New York, NY 10286.

Valgro Funds, Inc. [File No. 811–9635]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 30, 2004.

Applicant's Address: 377 Warren Dr., San Francisco, CA 94131–1033.

Sentry Fund, Inc. [File No. 811–1861]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 2, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $287,771 incurred in connection with the liquidation were paid by Sentry Investment Management, Inc., applicant's investment adviser. Applicant has retained $9,800 in cash to pay its remaining liabilities.

Filing Dates: The application was filed on August 26, 2004, and amended on September 30, 2004.

Applicant's Address: 1800 North Point Rd., Stevens Point, WI 54481.

AllianceBernstein Disciplined Growth Fund, Inc. [File No. 811–21065]

AllianceBernstein Dynamic Growth Fund, Inc. [File No. 811–21093]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By June 19, 2004 and June 30, 2004, respectively, all shareholders of each applicant had voluntarily redeemed their shares at net asset value. Expenses of approximately $1,750, incurred in connection with each liquidation were paid by Alliance

Capital Management L.P., investment adviser to each applicant.

Filing Dates: The applications were filed on August 20, 2004, and amended on September 24, 2004.

Applicants' Address: 1345 Avenue of the Americas, New York, NY 10105.

Babson-Stewart Ivory International Fund, Inc. [File No. 811–5386]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $33,571 incurred in connection with the liquidation were paid by applicant's investment adviser, Voyageur Asset Management Inc.

Filing Dates: The application was filed on June 24, 2004, and amended on September 28, 2004.

Applicant's Address: 100 South Fifth St., Suite 2300, Minneapolis, MN 55402.

Pioneer Indo-Asia Fund [File No. 811–8468]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2001, applicant transferred its assets to Pioneer Emerging Markets Fund, based on net asset value. Expenses of $98,592 incurred in connection with the reorganization were paid by Pioneer Investment Management, Inc., investment adviser to applicant and the acquiring fund.

Filing Dates: The application was filed on July 23, 2002, and amended on October 7, 2004.

Applicant's Address: 60 State St., Boston, MA 02109.

Pioneer Global Value Fund [File No. 811–10425]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on June 12, 2003, and amended on September 29, 2004.

Applicant's Address: 60 State St., Boston, MA 02109.

Separate Account VA G of Transamerica Occidental Life Insurance Company [File No. 811–10051]

Summary: Applicant has decided to abandon its registration as an investment company and seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on September 12, 2003.

Applicant's Address: 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499–0001

Separate Account VA H of Transamerica Occidental Life Insurance Company [File No. 811–10049]

Summary: Applicant has decided to abandon its registration as an investment company and seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on September 12, 2003.

Applicant's Address: 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499–0001

Anchor Pathway Fund [File No. 811–5157]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's board of directors approved the liquidation of the Applicant on June 15, 2004, and all of Applicant's assets were distributed in kind to its sole shareholder, Variable Separate Account of AIG SunAmerica Life Assurance Company on June 16, 2004. Any expenses incurred in connection with the liquidation were paid by AIG SunAmerica Life Assurance Company.

Filing Date: The application was filed on June 18, 2004, and amended on October 12, 2004.

Applicant's Address: 1 SunAmerica Center, Los Angeles, CA 90067–6022.

Galaxy VIP Fund [File No. 811–06726]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 7 and April 14, 2003, in connection with a merger, Applicant made distributions to its shareholders based on net asset value, and pro rata based on share ownership. Liberty Variable Investment Trust and SteinRoe Variable Investment Trust are the names of the funds surviving the merger. Columbia Management Group, Inc., the parent company of Columbia Management Advisors, Inc., Galaxy VIP Fund's investment adviser, paid the expenses incurred in connection with the merger, in the amount of $5800.

Filing Dates: The application was filed on August 3, 2004, and an amended application was filed on October 8, 2004.

Applicant's Address: One Financial Center, Boston, MA 02111.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3003 Filed 11–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27905]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 28, 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 November 22, 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 November 22, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AGL Resources, Inc. et al. (70–10243)

AGL Resources Inc. (''AGL Resources''), a registered public utility holding company, AGL Resources'' subsidiary service company, AGL Services Company (''AGL Services''), both of Ten Peachtree Place Suite 1000, Atlanta, GA 30309, AGL Resources' gas utility subsidiaries, Atlanta Gas Light Company (''AGLC''), Ten Peachtree Place Suite 1000, Atlanta, GA 30309, Chattanooga Gas Company (''CGC''), 6125 Preservation Drive Chattanooga, Tennessee 37416 and Virginia Natural

Gas, Inc. (''VNG''), 5100 East Virginia Beach Boulevard Norfolk, Virginia 23502; NUI Corporation (''NUI''), a New Jersey corporation and currently a public utility holding company claiming exemption under section 3(a)(1) of the Act by rule 2 under the Act; NUI's two gas public utility subsidiaries (''NUI Utility Subsidiaries''), NUI Utilities, Inc. (''NUI Utilities'') and Virginia Gas Distribution Company (''VGDC''); and NUI's direct and indirect nonutility subsidiaries (''NUI Nonutilities'' and together with the NUI Utility Subsidiaries, ''NUI Subsidiaries'') NUI Capital Corp. (''NUI Capital''), Utility Business Services, Inc. (''UBS'') Virginia Gas Company (''VGC''), Virginia Gas Storage Company, Virginia Gas Pipeline Company (''VGPC''), NUI Saltville Storage, Inc. (''NUISS''), NUI Storage, Inc. (''NUI Storage''), NUI Service, Inc.; NUI Energy, Inc. (''NUI Energy''), NUI Energy Brokers, Inc.(''NUI Energy Brokers''), NUI Energy Solutions, Inc., OAS Group, Inc. (''OAS''), NUI Sales Management, Inc., TIC Enterprises, LLC (''TIC''), NUI Richton Storage, Inc., Richton Gas Storage Company, LLC; NUI/Caritrade International LLC, NUI Hungary, Inc., and NUI International, Inc., all at 550 Route 202–206 Box 760, Bedminster, NJ 07921–0760 (collectively with AGL Resources, AGL Services, AGLC, CGC and VNG, ''Applicants''), request authority under sections 3(a)(1), 5, 6(a), 7, 9(a), 10, 11, 12(b), 12(c) and 13(b) of the Act and rules 16, 43, 45, 46, 54 and 88, 90 and 91 under the Act.

AGL proposes to acquire all of the issued and outstanding common stock of NUI and indirectly acquire the NUI Subsidiaries. Applicants also propose that NUI and the NUI Subsidiaries engage in certain financings and other transactions.

I. Description of the Parties

A. AGL Resources and Its Subsidiaries

1. AGL Resources

Applicants state that AGL Resources is a corporation organized under the laws of Georgia, and is an Atlanta-based energy services holding company. AGL Resources owns three gas public utility subsidiary companies: AGLC, CGC, and VNG which serve more than 1.8 million customers in three states (collectively, ''AGL Resources Utilities'').

Applicants state that AGL Resources' common stock has a five dollar par value and as of June 30, 2004, AGL Resources had 64,923,654 shares of common stock issued and outstanding. As of and for the six months ended June 30, 2004, AGL Resources had total assets of $4.01 billion, net utility plant assets of $2.26 billion, total operating revenues of $945 million, operating income of $186 million and net income of $87 million.

(a) AGL Resources' Utilities

(1) AGLC.—Applicants state that AGLC is a natural gas local distribution utility with distribution systems and related facilities serving 237 cities throughout Georgia, including Atlanta, Athens, Augusta, Brunswick, Macon, Rome, Savannah and Valdosta. AGLC also has approximately 6.0 billion cubic feet, or Bcf, of liquefied natural gas (''LNG'') storage capacity in three LNG plants to supplement the supply of natural gas during peak usage periods. The Georgia Public Service Commission (''GPSC'') regulates AGLC with respect to rates, maintenance of accounting records and various other service and safety matters. Applicants state that as of and for the six months ended June 30, 2004, AGLC had total assets of $2.41 billion, total operating revenues of $308 million and net income of $76 million. AGLC owns all of the outstanding stock of AGL Rome Holdings, Inc. (''Rome Holdings''). AGL Rome Holdings, Inc. owned property associated with a former manufactured gas plant in Rome, Georgia, but sold that property in December 2003.

(b) CGC

Applicants state that CGC is a natural gas local distribution utility with distribution systems and related facilities serving twelve cities and surrounding areas, including the Chattanooga and Cleveland areas of Tennessee. CGC also has approximately 1.2 Bcf of LNG storage capacity in its LNG plant. The Tennessee Regulatory Authority (''TRA'') regulates CGC with respect to rates, maintenance of accounting records and various other service and safety matters. As of and for the six months ended June 30, 2004, CGC had total assets of $147 million, total operating revenues of $55 million and net income of $7.0 million.

(1) VNG.—Applicants state that VNG is a natural gas local distribution utility with distribution systems and related facilities serving eight cities in the Hampton Roads region of southeastern Virginia. VNG owns and operates approximately 155 miles of a separate high-pressure pipeline that provides delivery of gas to customers under firm transportation agreements within the state of Virginia. VNG also has approximately 5.0 million gallons of propane storage capacity in its two propane facilities to supplement the supply of natural gas during peak usage periods. The Virginia State Corporation Commission (''VSCC'') regulates VNG with respect to rates, maintenance of accounting records and various other service and safety matters. Applicants state that as of and for the six months ended June 30, 2004, VNG had total assets of $736 million, total operating revenues of $210 million and net income of $21 million.

B. AGL Nonutilities

AGL Resources also holds direct and indirect interests in nonutility companies (''AGL Nonutilities'' and together with the AGL Utilities, ''AGL Subsidiaries'') whose retention has been authorized by order dated October 5, 2000 (HCAR No. 27243), (''AGL Merger Order'').

C. NUI

1. Utility Subsidiaries

Applicants state that NUI has two public utility subsidiary companies, NUI Utilities and VGDC. Through its subsidiaries, NUI operates natural gas distribution systems and natural gas storage and pipeline businesses.

(a) NUI Utilities

Applicants state that NUI Utilities distributes natural gas to approximately 371,000 customers in New Jersey, Florida and Maryland through its three regulated utility divisions, Elizabethtown Gas Company (''Elizabethtown Gas''), City Gas Company of Florida (''City Gas'') and Elkton Gas. Each division is subject to regulation by the public service commission in the states where it operates. Applicants state that, during fiscal year 2003, the operating revenues associated with the provision of distribution services by NUI Utilities' regulated utility divisions was approximately $484.8 million, representing 95% of the total operating revenues of NUI. Of this amount, 85% was generated by utility operations in New Jersey, where approximately 71% of NUI Utilities' customers are located. Total utility gas volumes sold or transported by such utility operations amounted to 63.7 Bcf, of which 87% was sold or transported in New Jersey.

Applicants state that NUI Utilities distributes gas through approximately 6,200 miles of steel, cast iron and plastic mains. The company has physical interconnections with five interstate pipelines in New Jersey and a single interstate pipeline in both Maryland and Florida. Common interstate pipelines along the company's operating system provide the company with the flexibility to manage pipeline capacity and supply, thereby optimizing system utilization.

Applicants state that, through its Elizabethtown Gas and City Gas divisions, NUI Utilities also has an appliance service, sales, leasing and financing businesses in New Jersey and Florida. The appliance group generated operating revenues of $11.4 million in fiscal year 2003 and had operating margins of $3.2 million in the same period.

(b) VGDC

VGDC is an indirect wholly owned public utility subsidiary of NUI and a direct subsidiary of VGC, a holding company for certain utility and nonutility businesses. VGDC distributes gas to approximately 275 customers in Virginia. During fiscal year 2003, VGDC sold approximately 200.785 Mcf of gas, of which 4% was sold to residential customers and 96% to commercial and industrial customers.

2. Nonutility Subsidiaries

(a) NUI Capital Corp.

Applicants state that the NUI Nonutilities' businesses are carried out primarily by NUI Capital and its subsidiaries. NUI Capital's only remaining non-regulated subsidiary with substantial continuing operations is UBS, a billing and customer information systems and services subsidiary. Applicants state that NUI's other non-regulated subsidiaries are winding down their operations. These subsidiaries include: NUI Energy, an energy retailer; NUI Energy Brokers, NUI's wholesale energy trading and portfolio management subsidiary; OAS, the company's digital mapping operation; and TIC, a sales outsourcing subsidiary that sold wireless and network telephone services.

Applicants state that UBS is a wholly owned subsidiary of NUI Capital. UBS provides outsourced customer information systems and services to NUI Utilities as well as investor-owned and municipal water/wastewater utilities. UBS offers customer and utility operations information systems and services, including account management, reporting, bill printing and mailing, and payment processing services. UBS presently serves 13 clients. The majority of UBS' clients are municipally-owned and operated water utilities across the United States. UBS' top three clients in terms of revenue generation are United Water, NUI Utilities and Middlesex Water. Over the past nine months, NUI Utilities has provided approximately 36% of UBS' revenues. Applicants state that UBS has been profitable in every year since 1995.

Applicants state that UBS' operating revenues and operating margins were $6.1 million and $3.6 million, respectively, in fiscal year 2003. UBS provides customer information systems and services to investor-owned and municipal utilities, as well as third party providers in the water, wastewater and gas markets. A customer information system developed and maintained by UBS is presently serving 13 clients in support of more than 1.5 million customers. UBS provides billing and payment processing services to NUI Utilities under a service agreement approved by the NJBPU. In June 2003, NUI approved a plan to sell UBS. Applicants state, however, that the September 2003 decision to sell NUI reduced the probability that a sale of UBS would occur, given that there was no guarantee that UBS' largest customer, NUI Utilities, would maintain a long-term relationship with UBS after the sale. After the acquisition, Applicants expect that the activities of UBS would be folded into NUI Utilities or replaced.

(b) VGC

VGC is a natural gas storage, pipeline and distribution company with principal operations in Southwestern Virginia. In addition to owning VGDC, a gas utility described above, VGC operates two storage facilities; one a high-deliverability salt cavern facility in Saltville, Virginia (''Saltville Storage Project'') and the other a depleted reservoir facility in Early Grove, Virginia. Combined, the facilities have approximately 2.6 Bcf of working gas capacity. VGC also owns and operates a 72-mile 8'' intrastate pipeline and serves as the construction and operations manager for the Saltville Storage Project as discussed below. All of VGC's businesses are regulated by the VSCC, and the Saltville Storage Project is regulated by the Federal Energy Regulatory Commission (''FERC''). VGC, which was acquired by NUI in March 2001, had operating margins of $8.7 million in fiscal year 2003.

(c) NUISS

NUI's wholly owned subsidiary, NUISS, is a fifty-percent member of SSLLC. SSLLC is a joint venture between subsidiaries of NUI and Duke Energy Gas Transmission (''DEGT'') that is developing a natural gas storage facility in Saltville, Virginia. SSLLC plans to expand the present Saltville Storage Project from its current capacity of 1 Bcf to approximately 12 Bcf in several phases. The Saltville Storage Project connects to DEGT's East Tennessee Natural Gas interstate system and its Patriot pipeline. SSLLC is subject to regulation by FERC under the Natural Gas Act.

In conjunction with the development of the Saltville Storage Project, NUI Energy Brokers entered into a twenty-year agreement with DEGT for the firm transportation of natural gas in the Patriot pipeline and a twenty-year agreement with SSLLC for the firm storage of natural gas. NUI is not using the Patriot pipeline transportation capacity at this time since it has discontinued its trading operations.

(d) NUI Storage

NUI Storage is a wholly owned subsidiary of NUI. Through its wholly owned subsidiaries, NUI Storage has acquired options on the land and mineral rights for property located in Richton, Perry County, Mississippi that the company plans to develop into a natural gas storage facility to help serve the Southeast United States. Like its companion storage facility in Saltville, Applicants expect Richton to offer the high-deliverability capabilities of salt dome storage for natural gas and will have access to a number of major interstate pipelines, including Destin Pipeline and its connections to Gulf South, Gulfstream, Florida Gas Transmission, SONAT, Tennessee Natural Gas and Transco. Through its connection to Destin Pipeline, Richton will have direct access to the gas supplies in the Gulf of Mexico, as well as supplies from the interconnected interstate pipelines referenced above. Richton can also serve as a potential storage facility for the various proposed liquefied natural gas projects in the Gulf Coast. Applicants anticipate that Richton will be subject to FERC regulation.

3. NUI and NUI Utilities' Capital Structure

The capital structures of NUI, VGDC and NUI Utilities as of June 30, 2004 are shown in the tables below.

	NUI		NUI utilities	
	($MM)	Percent of total cap	($MM)	Percent of total cap
Long-term debt	199	28.4	199	39.1
Short-term debt	[1] 294	42.0	[2] 86	16.9
Common stock	207	29.6	224	44.0
Total capitalization	$70	100.0	$501	100.0

	VGDC	
	($MM)	Percent of total cap
Long-term debt	0	0
Short-term debt	[3] (1)	50
Common stock equity	(1)	50
Total capitalization	(1)	100.0

NUI and NUI Utilities state that they have the following ratings. Applicants state that VGDC has no rated debt.

	NUI	NUI utilities
Moody's debt rating	Caa-1	B–1.
Moody's outlook	Negative	Negative.
S&P corporate credit rating		BB.
S&P outlook		Credit Watch with developing implications.

Description of the Transaction

A. The Merger

Applicants state that, on September 26, 2003, the Board of Directors of NUI announced its intention to pursue the sale of the company. Applicants have entered into an Agreement and Plan of Merger by and among AGL Resources Inc., Cougar Corporation and NUI Corporation, dated as of July 14, 2004 (''Merger Agreement''), under which AGL Resources has agreed to acquire all the outstanding shares of NUI for $13.70 per share in cash, or $220 million in the aggregate based on approximately 16 million shares currently outstanding. AGL Resources will assume the outstanding indebtedness of NUI at closing. As of March 31, 2004, NUI had approximately $607 million in debt and $136 million of cash on its balance sheet, bringing the current net value of the acquisition to $691 million. AGL Resources anticipates that the amount of NUI debt and cash will change prior to the time of closing. Applicants state that NUI will register as a holding company under the Act by filing a Notification of Registration on Form U5A upon the consummation of the Merger.

B. Financing the Merger

By order dated April 1, 2004 (HCAR No. 27828) (''Financing Order''), the Commission authorized AGL Resources, the AGL Utilities and the AGL Nonutilities to engage in various financing transactions in an aggregate amount outstanding at any one time not to exceed $5 billion through March 31, 2007. AGL Resources is not requesting additional financing authorization to finance the purchase of NUI. AGL Resources may elect to finance the cash portion of the purchase price through the issuance of common stock at or prior to closing if market conditions are favorable. AGL Resources also must refinance a substantial portion of NUI and NUI Utilities' outstanding debt upon closing, due to ''change in control'' provisions included in these financings. AGL Resources expects to maintain its strong investment-grade rating and its current dividend policy post-acquisition. After the Merger, AGL Resources states that its' ratio of equity to total capitalization will remain well above 30%.

Applicants state that the Financing Order provides sufficient authority for AGL Resources to proceed in this fashion because, in the unlikely event that AGL Resources were to sell common stock and not close the NUI acquisition, the proceeds of the stock issuance would be used only for permitted corporate purposes.

C. Conditions

The transaction is subject to the approval of NUI's shareholders, the Federal Communications Commission, and the state regulatory agencies of New Jersey, Maryland and Virginia. Applicants state that the consummation of the transaction is subject to the following conditions: (i) NUI shall have received orders approving the transaction from the above referenced state utility commissions that contain certain terms specified by AGL Resources, except as would not have a material adverse effect on NUI, NUI Utilities, or AGL Resources; (ii) neither NUI nor any of its subsidiaries shall have been indicted or criminally charged for a felony criminal offense by any governmental entity (with the express exception of NUI and NUI Energy Brokers with respect to the matters specified in a settlement (''NJAGO Settlement'') with the New Jersey Attorney General's Office (''NJAGO'')) relating to the matters that are the subject of the New Jersey Board

[1] Applicants state that this figure is net of $111 million of cash at June 30, 2004.

[2] Applicants state that this figure is net of $66 million of cash at June 30, 2004.

[3] Applicants state that this figure includes current maturities of long-term debt. Applicants further state that this figure is net of $1 million of cash at June 30, 2004.

of Public Utilities Settlement Order (''Settlement Order'') and the stipulation and agreement (''Stipulation and Agreement'') referred to in the Settlement Order, the NJAGO Settlement or the Stier Anderson Report (as those terms are defined in the Merger Agreement), and NUI and its subsidiaries shall not have received any notice of non-compliance in any material respect with the NJAGO Settlement, and there shall have been no revocation of or material changes to the terms of the NJAGO Settlement; (iii) neither NUI or the NUI Subsidiaries shall be the subject of an active investigation with respect to the matters that are the subject of the Settlement Order and the Stipulation Agreement referred to therein, the NJAGO Settlement or the Stier Anderson Report, which, individually or in the aggregate, would reasonably be expected to have a material adverse effect on NUI or NUI Utilities and (iv) no other material adverse effect as defined in the Merger Agreement has occurred.

Applicants state that AGL Resources has the right to terminate the Merger Agreement if NUI does not have necessary interim financing in place by September 30, 2004. On September 29, 2004, NUI announced that it and NUI Utilities had obtained credit facilities aggregating $95 million. AGL Resources has reviewed the terms of the credit facilities and currently believes that the credit facilities conform with the terms and requirements of the Merger Agreement. AGL Resources may also terminate the agreement if NUI and NUI Utilities do not have certain other financing facilities in place or drawn, or there is a payment default or an acceleration of indebtedness. Lastly, Applicants state that the Merger Agreement may be terminated: (i) By NUI in order for NUI to pursue a superior acquisition proposal; (ii) by AGL Resources based upon the board of directors of NUI withdrawing its recommendation of the Merger Agreement or recommending a superior acquisition proposal to the shareholders of NUI; (iii) by either party due to the consummation of the merger not occurring by April 13, 2005 (which is subject to a 90 day extension to obtain regulatory approvals); (iv) by either party due to the shareholders of NUI failing to approve the Merger Agreement or (v) by AGL Resources based upon the existence of a material, uncured breach of the Merger Agreement by NUI, provided that in the cases of clauses (iii)–(v) above, a termination fee (as described below) is payable only if and when NUI enters into a definitive agreement with respect to an alternative acquisition proposal within 12 months of the termination. In the event of a termination of the Merger Agreement under the circumstances provided in (i) and (ii), NUI will have to pay AGL Resources a termination fee of $7.5 million. The Merger Agreement also contains other customary termination rights, which do not result in the payment of a termination fee.

D. Management and Operations Following the Merger

Applicants state that under the Merger Agreement, AGL Resources has agreed to acquire NUI in a reverse triangular merger in which, at closing, a newly created subsidiary of AGL Resources will merge with and into NUI. Upon the consummation of the Merger, NUI will be a wholly owned direct subsidiary of AGL Resources. Applicants state that, upon closing NUI's current CEO, will leave the company. AGL Resources is evaluating the appropriate composition of NUI's senior management after closing as a part of the work of a combined AGL Resources and NUI transition team. The members of the NUI and NUI Utilities Boards of Directors will resign and new directors will be selected from the management of AGL Resources and its subsidiaries. The AGL Resources Board of Directors intends to add a New Jersey resident of significant professional stature and business qualification to the AGL Resources Board and AGL Resources has sought to have at least one Virginian business leader on its Board.

AGL Resources states that it is still evaluating personnel to fill key management positions and roles at NUI. AGL Resources intends to manage and govern NUI and NUI Utilities in the same manner in which it currently manages AGLC, CGC and VNG. At the corporate level, it is clear that there is some overlap among employees at AGL Resources, NUI and NUI Utilities, particularly in the ''corporate services'' area, including accounting, finance, legal, and public relations. AGL Resources and NUI have established an integration team that will identify redundancies that should be addressed as AGL Resources integrates NUI's corporate management into AGL Resources' existing management structure.

III. Affiliate Transactions

In the AGL Merger Order, the Commission approved the formation of AGL's system service company, AGL Services, and authorized certain intrasystem transactions. Applicants propose that NUI and the NUI Subsidiaries enter into a services agreement with AGL Services under the same form of services agreement in the AGL Merger Order.

A. AGL Services

Applicants state that AGL Services is a service company established in accordance with section 13(b) of the Act. AGL Services provides business services to AGL Resources and its subsidiaries including: rates and regulatory services, internal auditing, strategic planning, external affairs, gas supply and capacity management, legal services and risk management, marketing, financial services, information systems and technology, corporate services, investor relations, customer services, purchasing, employee services, engineering, business support, facilities management and other services, such as business development, that may be agreed upon by the subsidiaries and AGL Services. As compensation for services, the services agreement between the subsidiaries and AGL Services provides for client companies to pay to AGL Services the cost of these services, computed in accordance with the applicable rules and regulations under the Act and appropriate accounting standards.

Applicants propose that AGL Services provide business services to NUI and the NUI Subsidiaries under the same terms and conditions as AGL Services serves the companies currently within the AGL Resources registered holding company system, as approved by the Commission.

B. Gas Procurement and Asset Management Arrangement

NUI Utilities also proposes to enter into a three year gas procurement and asset management arrangement with a subsidiary of AGL Resources, Sequent Energy Management (''Sequent''). Sequent provides gas procurement and transportation and storage capacity asset management services to AGLC, VNG and CGC under arrangements with the respective state commissions with jurisdiction over AGLC, VNG and CGC.[4] Under these arrangements, Sequent provides commodity gas, including related procurement services, and also acts as agent for AGLC, VNG and CGC in connection with transactions for gas transportation and storage capacity. Sequent proposes to provide similar services to NUI Utilities and VGDC

[4] Applicants assert that these transactions are exempt from regulation under section 13(b) of the Act by virtue of rules 80 and 81.

subject to the approval of the NJBPU and Virginia State Corporation Commission.

The asset management model that Sequent employs provides for revenue sharing between the asset manager and AGLC, VNG and CGC's ratepayers. Applicants state that under its current arrangements with AGLC, VNG and CGC, Sequent contributed approximately $9.9 million to customers in 2003.

C. Billing Services

NUI Utilities currently has an Agreement for Billing Services, dated February 18, 2004, with UBS under which UBS provides NUI Utilities with certain billing related services using NUI Utilities' customer information system and certain other data center services on UBS' mainframe computer, including operating systems related to NUI Utilities' work order management, leak management, meter management, time entry and field services. The agreement is effective until March 31, 2007, but may be terminated by NUI Utilities with 180 days prior written notice. This agreement has been approved by the NJBPU.

Applicants state that UBS charges NUI Utilities market rates for the provision of these services, however, after closing, AGL Resources proposes to cause UBS and NUI Utilities to amend the agreement to require the services to be provided to NUI Utilities at UBS' cost. Prior to implementing such amendment, however, AGL Resources must determine whether a change in the pricing standard to terms more favorable to NUI Utilities would trigger contractual obligations to provide cost-based pricing to UBS' unaffiliated customers. In addition, if NJBPU approval of the amended contract is required, AGL Resources must seek this authorization before restructuring the contract between UBS and NUI Utilities. As a result, AGL Resources requests a temporary exception to the ''at cost'' provisions of section 13(b) of the Act and the applicable rules for two years to provide adequate time to restructure this contract. Applicants state that it is possible that at the end of the two-year period AGL Resources will be able to restructure all of UBS' existing contracts so that it may consolidate UBS with NUI Utilities.

D. Construction and Management Services

VGC provides construction and operations management services to SSLLC through its wholly owned subsidiary, Virginia Gas Pipeline Company (''VGPC''). Applicants state that VGPC serves as the construction and operations manager to SSLLC, under an agreement (''Operating Agreement''), dated August 15, 2001. Under the terms of the Operating Agreement, SSLLC reimburses VGPC for the costs it incurs to construct, maintain and operate SSLLC's facilities, including VGPC's administration and labor costs.

Applicants request that the Commission exempt these services from section 13(b) and the applicable rules in conjunction with Applicant's request that SSLLC be exempted under rule 16 (described below).

IV. Tax Allocation Agreement

By order dated December 23, 2003 (HCAR No. 27781), the Commission authorized AGL Resources' tax allocation agreement. AGL Resources proposes to add NUI and the NUI Subsidiaries to the existing tax allocation arrangements for the AGL Resources system.

V. Rule 16 Exemption

SSLLC, a 50% joint venture between NUI Saltville Storage and Duke Energy Gas Transmission, is developing a natural gas storage facility in Saltville, Virginia. SSLLC will not have more than 50% of its voting securities controlled by a registered holding company. Applicants assert that SSLLC is entitled to an exemption from the obligations, duties and liabilities imposed upon it under rule 16 under the Act as a subsidiary or affiliate of a registered holding company. Applicants request that the Commission authorize AGL Resources to acquire NUI's interest in SSLLC under sections 9(a)(1) and 10. The exemption under rule 16 will permit SSLLC to continue to operate in accordance with its usual practice without the need for additional authorization under the Act.

VGC provides construction and operations management services to SSLLC. Applicants request that the Commission exempt these services from section 13(b) and the rules thereunder because SSLLC will be exempt under rule 16, upon the issuance of the authorization requested herein, and, accordingly, will not be treated as a subsidiary of a registered holding company under the Act.

VI. Section 3(a)(1) Exemption Request for VGC

Applicants state that VGC and its only utility subsidiary, VGDC, carry on their utility operations exclusively within Virginia where each company is incorporated. Applicants state that after the Merger, VGC and VGDC, will remain predominantly intrastate in character and carry on their business substantially within Virginia. Applicants request that the Commission issue an order under section 3(a)(1) of the Act providing that VGC and each of its subsidiary companies, will be exempt from all provisions of the Act, except section 9(a)(2). VGC will remain jurisdictional as a subsidiary of a registered holding company. Applicants state that the VSCC will continue to have jurisdiction and authority over all of VGDC's rates, services and operations following the acquisition.

VII. Financing Authority

Applicants request authority for NUI and the NUI Subsidiaries, after the consummation of the Merger, to engage in the various financing transactions described below through March 31, 2007 (''Authorization Period''). Applicants state that financings by NUI and the NUI Subsidiaries will be subject to the following limitations (''Financing Limitations''):

A. Financing Limitations

1. Use of Proceeds

Applicants state that the proceeds from the sale of securities in these financing transactions will be used for general corporate purposes, including the financing, in part, of the capital expenditures and working capital requirements of NUI and its subsidiaries, for the acquisition, retirement or redemption of securities previously issued by NUI or the NUI Subsidiaries, and for authorized investments in companies organized in accordance with rule 58 under the Act, and for other lawful purposes.

2. Effective Cost of Money

The effective cost of money on long-term debt borrowings in accordance with authorizations granted under the Application will not exceed the greater of (i) 500 basis points over the comparable-term U.S. Treasury securities or (ii) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings in accordance with the authorizations granted in the Application will not exceed the greater of (i) 500 basis points over the comparable-term London Interbank Offered Rate (''LIBOR'') or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

3. Maturity

The maturity of long-term debt will be between one and 50 years. Short-term debt will mature within one year.

4. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities issued in accordance with this Application will not exceed the greater of (i) 5% of the principal or total amount of the securities being issued or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

5. Common Equity Ratio

NUI Utilities and VGDC, on an individual basis, will maintain common stock equity of at least 30% of total capitalization as shown in its most recent quarterly balance sheet.

6. Investment Grade Ratings

Except for securities issued for the purpose of funding Money Pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission under this Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated, are rated investment grade; and (iii) all outstanding securities of AGL Resources that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended (''1934 Act''). Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission under this Application at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied. A security issued prior to the consummation of the Merger, under the Act or in accordance with any applicable rule, regulation or order of the Commission under the Act, would remain validly issued notwithstanding a change, subsequent to the issuance, in the rating of that security or other securities issued by any company in the AGL Resources system.

B. NUI Securities

NUI requests authorization to issue and sell debt and equity securities to AGL Resources and/or AGL Resources' financing subsidiaries as necessary to finance the authorized and permitted businesses of NUI and the NUI Subsidiaries. In particular, NUI requests authorization to issue Intercompany Notes to AGL Resources or AGL Resources' financing subsidiaries in connection with the refinancing of NUI's pre-Merger indebtedness. A form of Intercompany Note, containing the applicable terms and conditions is attached to the Application in Exhibit L–2. NUI states that Intercompany Notes would be issued by NUI in an amount at any one time outstanding of up to $285 million. NUI states that it would not issue debt or equity securities to third-party, unaffiliated entities post-Merger without seeking subsequent Commission authorization. NUI also requests authorization to acquire the securities of its direct and indirect subsidiaries and to extend credit thereto for purposes of financing these companies' authorized and permitted businesses in an aggregate amount outstanding during the Authorization Period not to exceed $300 million.

C. NUI Utilities and VGDC Debt Securities

Applicants request authorization for NUI Utilities and VGDC to issue intercompany debt, commercial paper, secured or unsecured bank loans and borrowings under the Utility Money Pool (''Utility Short-Term Debt''), all with terms of less than a year, in an aggregate amount of up to $600 million and $250 million, respectively, during the Authorization Period. Applicants state that all Utility Short-Term Debt will be subject to the Financing Limitations. Applicants request authorization for NUI Utilities and VGDC to issue unsecured and secured short-term debt to meet the companies' working capital needs. Applicants state that NUI Utilities and VGDC would issue secured short-term debt only in circumstances when the issuer can expect a savings in costs over the issuance of unsecured short-term debt or when unsecured credit is unavailable, except at a higher cost than secured short-term debt. Applicants anticipate that the collateral offered as security would generally be limited to short-term assets such as the issuer's inventory and/or accounts receivable.

If NUI Utilities or VGDC elect to issue commercial paper, either under rule 52 of the Act or under an applicable Commission order, NUI Utilities and VGDC request authorization to be made a party to any AGL Resources' credit facility as back-up to the commercial paper.[5]

VIII. NUI Utilities' Intercompany Note

NUI Utilities requests authorization to issue Intercompany Notes to AGL Resources or a financing subsidiary of AGL Resources in connection with the refinancing of NUI Utilities pre-Merger indebtedness. Applicants state that NUI Utilities would issue Intercompany Notes in an amount at any one time outstanding of up to $275 million. Applicants request that the Intercompany Notes issued by NUI Utilities be for terms longer than one year and accordingly the Intercompany Note would not count against the NUI Utilities' Short-Term Debt stated above.

A. Authorization and Operation of the Money Pools

Applicants request authorization for NUI Utilities and VGDC to participate in AGL Resources' Utility Money Pool and to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, lend and extend credit to, and acquire promissory notes from, one another through the Utility Money Pool subject to the Financing Limiations.

Specifically, Applicants state that the Utility Money Pool funds are available for short-term loans to the Utility Money Pool participants from time to time through: (i) Surplus funds in the treasuries of participants and (ii) proceeds received by the Utility Money Pool participants from the sale of commercial paper and borrowings from banks (''External Funds''). Funds are made available from sources in the order that AGL Services, as the administrator under the Utility Money Pool Agreement, determines would result in a lower cost of borrowing compared to the cost that would be incurred by the borrowing participants individually in connection with external short-term borrowings, consistent with the individual borrowing needs and financial standing of Utility Money Pool participants that invest funds in the Utility Money Pool.

Each Utility Money Pool borrower (''Utility Borrower'') which borrows through the Utility Money Pool will

[5] Applicants state that financing by VGDC would generally be subject to the jurisdiction of the VSCC and, except as authorized under this Application or other Commission rule or order, would be conducted on an exempt basis under rule 52(a).

borrow *pro rata* from each Utility Money Pool participant that invests surplus funds, in the proportion that the total amount invested by the Utility Money Pool participant bears to the total amount then invested in the Utility Money Pool. The interest rate charged to Utility Borrowers on borrowings under the Utility Money Pool is equal to AGL Resources' actual cost of external short-term borrowings and the interest rate paid on loans to the Utility Money Pool is a weighted average of the interest rate earned on loans made by the Utility Money Pool and the return on excess funds earned from the investments described below. The interest income and investment income earned on loans and investments of surplus funds is allocated among those Utility Money Pool participants that have invested funds in accordance with the proportion each participant's investment of funds bears to the total amount of funds invested in the Utility Money Pool. Applicants state that borrowings through the Utility Money Pool by NUI Utilities would be limited to $600 million and borrowings by VGDC would be limited to $250 million at any one time outstanding.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) are ordinarily invested in one or more short-term investments, including: (i) Obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities; (ii) commercial paper; (iii) certificates of deposit; (iv) bankers' acceptances; (v) repurchase agreements; (vi) tax exempt notes; (vii) tax exempt bonds; (viii) tax exempt preferred stock and (ix) other investments that are permitted by section 9(c) of the Act and rule 40.

Each Utility Borrower receiving a loan through the Utility Money Pool is required to repay the principal amount of the loan, together with all interest accrued, on demand and in any event within one year after the date of the loan. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty and without prior notice.

In the Financing Order, AGL Resources and the AGL Nonutility Subsidiaries were granted authorization to operate a nonutility money pool (''Nonutility Money Pool''), and the AGL Nonutility Subsidiaries were authorized to make unsecured short-term borrowings from the Nonutility Money Pool, to contribute surplus funds to the Nonutility Money Pool, and to lend and extend credit to, and to acquire promissory notes from, one another through the Nonutility Money Pool subject to the terms and conditions set forth in the Financing Order. Applicants request that, following the Merger, the NUI Nonutilities be authorized to participate in the Nonutility Money Pool under the same terms and conditions as the AGL Nonutility Subsidiaries.

AGL Resources and NUI would continue to contribute surplus funds and to lend and extend credit to the Utility Money Pool and the Nonutility Money Pool. AGL Resources and NUI will not borrow from either the Utility Money Pool or the Nonutility Money Pool. AGL Services will continue to serve as administrator for both the Utility Money Pool and the Nonutility Money Pool and will provide the administrative services at cost.

B. Guarantees

Applicants request authorization for AGL Resources to guarantee the obligations of NUI and the NUI Subsidiaries. In addition, Applicants request authority for NUI, NUI Utilities, VGC and VGDC to enter into guarantees, obtain letters of credit, enter into expense agreements or provide credit support with respect to obligations of their subsidiaries (''Guarantees'') subject to the Financing Limitations in the amount of $150 million and $100 million, with respect to NUI Utilities and VGDC, and in the amount of $300 million and $75 million with respect to NUI and VGC. These Guarantees may take the form of, among others, direct guarantees, reimbursement undertakings under letters of credit, ''keep well'' undertakings, agreements to indemnify, expense reimbursement agreements, and credit support with respect to the obligations of the subsidiary companies as may be appropriate to enable the system companies to carry on their respective authorized or permitted businesses. Applicants state that any Guarantee that is outstanding at the end of the Authorization Period will remain in force until it expires or terminates in accordance with its terms. Certain Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, for purposes of measuring compliance with the appropriate Guarantee limit the exposure under a Guarantee would be determined by appropriate means, including estimation of exposure based on potential payment amounts. Applicants request that NUI and the NUI Subsidiaries be charged a fee for any Guarantee provided on its behalf that is not greater than the cost, if any, incurred by the guarantor in obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

C. Hedges

Applicants request authorization for NUI, NUI Utilities, VGC and VGDC to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements (''Hedging Instruments''). Hedging Instruments, in addition to the foregoing sentence, may also include the issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR-based swap instruments. These companies would employ Hedging Instruments as a means of prudently managing the risk associated with any of its outstanding debt by, in effect, synthetically: (i) Converting variable-rate debt to fixed-rate debt; (ii) converting fixed rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable-rate debt and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. Applicants state that, in no case will the notional principal amount of any Hedging Instrument exceed that of the underlying debt instrument and related interest rate exposure and these companies will not engage in ''leveraged'' or ''speculative'' transactions. The underlying interest rate indices of the Hedging Instruments will closely correspond to the underlying interest rate indices of the companies' debt to which the Hedging Instrument relates. Off-exchange Hedging Instruments would be entered into only with counterparties whose senior debt ratings are investment grade as determined by any one of Standard & Poor's, Moody's Investors Service, Inc. or Fitch IBCA, Inc. (''Approved Counterparties'').

In addition, Applicants request authorization for NUI, NUI Utilities, VGC and VGDC to enter into Hedging Instruments with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-

traded Hedging Instruments (''Forward Sale''); (ii) the purchase of put options on Hedging Instruments (''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options on Hedging Instruments (''Zero Cost Collar''); (iv) transactions involving the purchase or sale, including short sales, of Hedging Instruments or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars appropriate for the Anticipatory Hedges.

Hedging Instruments may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. The companies will determine the optimal structure of each Hedging Instrument transaction at the time of execution.

D. Changes in Capital Stock of Wholly-Owned Subsidiaries

Applicants request authorization to change the terms of the authorized capital stock of NUI and any wholly owned subsidiary of NUI authorized capital stock by an amount deemed appropriate by AGL Resources or other intermediate parent company subject to the following conditions. A subsidiary will be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any action by NUI Utilities or VGDC would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the utility subsidiary is incorporated and doing business. In addition, NUI Utilities and VGDC will maintain, during the Authorization Period, a common equity capitalization of at least 30%.

E. Payment of Dividends Out of Capital or Unearned Surplus

Applicants request authorization for NUI and the NUI Nonutilities to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus. Applicants state that NUI and the NUI Nonutilities will not declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of some or all of its assets; (ii) has engaged in a restructuring or reorganization and/or (iii) is returning capital to an associate company. In addition, NUI or an NUI Nonutility would only declare or pay dividends to the extent permitted under applicable corporate law and state or national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants.

Applicants request that the Commission reserve jurisdiction over NUI Utilities' payment of dividends out of capital and unearned surplus in an amount up to its pre-merger retained earnings and out of post-merger earnings without regard to any deductions attributable to the impairment of goodwill pending the completion of the record.

Applicants represent that NUI Utilities will not declare or pay any dividend out of capital or unearned surplus in contravention of any law restricting the payment of dividends. NUI Utilities also will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions to shareholders. NUI Utilities would not pay dividends out of capital or unearned surplus if to do so would cause its equity to decline to less than 30% of total capitalization.

F. Financing Entities

Applicants request authorization for NUI Utilities to organize new corporations, trusts, partnerships or other entities (''Financing Entities''), or to use existing AGL Resources' Financing Entities that will facilitate financings by issuing short-term debt, long-term debt, preferred securities, equity securities or other securities to third parties and transfer the proceeds of these financings to their respective parents.

Applicants also request authorization for NUI Utilities to: (i) Issue debentures or other evidences of indebtedness to Financing Entities in return for the proceeds of the financing; (ii) acquire voting interests or equity securities issued by the Financing Entities to establish ownership of the Financing Entities (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Entities) and (iii) guarantee a Financing Entity's obligations in connection with a financing transaction. Any amounts issued by Financing Entities to a third party under this authorization will be included in the overall external financing limitation authorized herein for the immediate parent of the Financing Entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included. NUI Utilities also requests authorization to enter into support or expense agreements (''Expense Agreement'') with Financing Entities to pay the expenses of any Financing Entity. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Entity from its parent or another subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or subsidiary provides services related to the financing to the Financing Entity be at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent or subsidiary, in the event of the bankruptcy of the parent or subsidiary, without interruption or an increase of fees. Applicants request authorization for NUI Utilities, under section 13(b) of the Act and rules 87 and 90, to provide such services at a charge not to exceed a market price but only for so long as the Expense Agreement established by the Financing Entity is in place.

G. Intermediate Subsidiaries

Applicants request authorization for NUI to acquire, directly or indirectly, the securities of one or more entities (''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more exempt wholesale generators, as that term is defined in section 32 of the Act (''EWGs''), foreign utility companies as that term is defined in section 33 of the Act (''FUCOs''), companies exempt under rule 58 (''Rule 58 Companies''), exempt telecommunications companies, as that term is defined under section 34 of the Act, (''ETCs'') or other non-exempt nonutility subsidiaries. These Intermediate Subsidiaries may also engage in certain administrative activities (''Administrative Activities'') and development activities (''Development Activities'').

Administrative Activities include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage investments in nonutility subsidiaries. Development Activities are limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights;

negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities that may be required in connection with the purchase, acquisition, financing or construction of facilities, or the acquisition of securities of or interests in new businesses.

An Intermediate Subsidiary may be organized, among other things: (i) To facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Company, ETC or other nonutility subsidiary; (ii) after the award of such a bid proposal, to facilitate closing on the purchase or financing of an acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any such company to, among other things, effect an adjustment in the respective ownership interests in such business held by NUI and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired non-utility companies; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit NUI's exposure to taxes; (vii) to further insulate NUI, NUI Utilities and VGDC from operational or other business risks that may be associated with investments in non-utility companies or (viii) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (i) Financings authorized in this proceeding; (ii) any appropriate future debt or equity securities issuance authorization obtained by NUI from the Commission and (iii) other available cash resources, including proceeds of securities sales by the NUI Nonutilities under rule 52. To the extent that NUI provides funds or Guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO or Rule 58 Company, the amount of the funds or Guarantees are included in NUI's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

AGL Resources requests that its authorization, in the Financing Order, to make expenditures on Development Activities, as defined above, in an aggregate amount of up to $600 million be extended to include the NUI Nonutilities.[6]

Neither AGL Resources nor any of its subsidiaries presently has an interest in any EWG or FUCO.

IX. Reorganization

AGL Resources and NUI request authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in the NUI Nonutilities, and the activities and functions related to these investments. To effect any consolidation or other reorganization, AGL Resources or NUI may wish to merge or contribute the equity securities of one NUI Nonutility to another NUI Nonutility (including a newly formed Intermediate Subsidiary) or sell (or cause a nonutility subsidiary to sell) the equity securities or all or part of the assets of one nonutility subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, AGL Resources and NUI request authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, their ownership interests in existing and future NUI Nonutility. These transactions may take the form of a nonutility subsidiary selling, contributing, or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to an Intermediate Subsidiary or to another nonutility subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing nonutility subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.

X. Retention of Nonutility Subsidiaries

Applicants state that Exhibit J–1 to the Application describes AGL Resources' current plans for retaining or divesting each of the NUI Nonutilities and discusses the legal basis for retention where applicable. Applicants state that numerous NUI Nonutilities referenced in Exhibit J–1 will be wound down, liquidated or dissolved. AGL Resources will endeavor to exit these investments as soon as is prudent, giving due regard for the need to insulate the rest of the AGL Resources group from any liabilities or obligations that may be associated with these companies.

In addition, AGL Resources seeks authorization to retain UBS and for UBS to continue to provide services to NUI Utilities under its current arrangement for no less than two years after the date of the order in this matter. During that time, AGL Resources will endeavor to either restructure the existing UBS services agreements with NUI Utilities so that these services may be provided at cost (provided that the modification is practicable given UBS' other contractual arrangements), or would otherwise endeavor to consolidate the applicable portions of UBS's current operations into NUI Utilities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3004 Filed 11–3–04; 8:45 am]

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[6] The Commission authorized AGL Resources to follow a ''revolving fund'' concept for permitted expenditures on Development Activities. Thus, to the extent a nonutility subsidiary in respect of which expenditures for Development Activities were made subsequently becomes an EWG, FUCO or Rule 58 Company, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the ''aggregate investment'' in the entity under rule 53 or 58, as applicable.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50607; File No. SR–FICC–2004–15]

Self-Regulatory Organizations; the Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Trade Submission Requirements and Pre-Netting

October 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 30, 2004, The Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the rules of its Government Securities Division (''GSD'') to broaden its trade submission requirements and to prohibit pre-netting activities of certain affiliates of its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through a recent survey of GSD members and through other means, FICC has learned that there is a great deal of Government securities activity that is currently being executed or cleared and guaranteed as to settlement by affiliates of FICC's netting members, some of which are active market participants, and is not being submitted to FICC. This currently does not represent a violation of the GSD's rules, which require that netting members submit their own eligible trading activity but do not address member affiliate trading activity.

FICC has also determined that its trade submission requirements have been ineffective in preventing the ''pre-netting'' of otherwise netting-eligible activity by netting members as well as their affiliates. In fact, FICC believes that certain members may be purposefully funneling eligible transactions through their non-member affiliates in order to avoid having to submit these transactions to the clearing corporation. Such pre-netting practices, which may take the form of ''internalization,'' ''summarization,'' or ''compression,'' prevent the submission to the clearing corporation of transactions on a trade-by-trade basis.[3] The GSD's rules currently prohibit certain pre-netting practices by requiring that all eligible member-executed trades be submitted on a trade-by-trade basis. The proposed rule change further expands this requirement and extends it to affiliate trades.

The submission to FICC of eligible activity of each GSD netting member and that of its affiliates that are active market participants is necessary to preserve the integrity of the netting process and the safety and soundness of the overall clearance and settlement process. The consequence of a gap in FICC's trade submission requirements is the introduction of significant risk issues for FICC and the Government securities marketplace as a whole.

The GSD employs several methods to reduce risk including collateral and mark-to-market requirements and various monitoring procedures. These methods have been highly successful in protecting the GSD and its members from loss. The most powerful risk management tool employed by the GSD is its multilateral netting by novation process, which eliminates the need to settle the large majority of receive and deliver obligations created by the trading activity of members. (For example, each business day during the first half of 2004, the netting process safely eliminated the settlement risk posed by an average of about 73,000 government securities transactions worth approximately $1.82 trillion.) The integrity of this netting process depends upon the submission to the GSD of all eligible activity on a trade-by-trade basis.

For this reason, FICC, similar to other registered clearing agencies, seeks to prohibit pre-netting activity on the part of members.[4] Indeed, it is the avoidance of ''broker pre-netting'' that was a fundamental reason for the formation of the Government Securities Clearing Corporation, the predecessor of the GSD, in the 1980s. The absence from the GSD's netting and settlement processes of all eligible trades of an active market participant that is a GSD netting member or an affiliate of a GSD netting member presents systemic risk to the marketplace for a number of reasons, including the following:

1. Counterparty Credit Risk

Management of the risk of trades that are not submitted to the clearing corporation falls to each direct counterparty including ones that may have insufficient capital or financial strength and/or inadequate internal processes to mitigate such risk. Counterparty risk is not managed in a centralized, transparent manner, and the myriad of risk protections built into the FICC process that have been supported by the industry and have been approved by the Commission are not available.

2. Operational Risk

Eligible trades that are not submitted to FICC introduce operational risk, including ''9–11'' type risk, to the extent such trades are not submitted to FICC for comparison and guaranteed settlement within minutes of execution through the Real-Time Trade Matching System. Should a catastrophic event occur after trade execution, submission of trade data could be significantly delayed or such data even lost. Trade guaranty would also not be obtained immediately, if at all, because the trade did not compare.

It is noteworthy that the GSD now receives approximately ninety-eight percent of its trade data on a real-time basis. That development alone has significantly improved the GSD's ability to timely manage the risk arising from the over two trillion dollars of daily activity in the Government securities marketplace.

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] In this regard, it should be noted that on February 28, 2003, the National Securities Clearing Corporation (''NSCC''), an FICC affiliate, issued a paper titled ''Managing Risk in Today's Equity Market: A White Paper on New Trade Submission Safeguards,'' in which it defined recent trade submission practices that are creating risks in the equities market. *See http://www.dtcc.com/ThoughtLeadership/index.htm.* In the paper, NSCC defined three trade submission practices that are some form of pre-netting: (i) *Compression*, which is a technique to combine submissions of data for multiple trades to the point where the identity of the party actually responsible for the trades is masked; (ii) *internalization*, which is a technique in which trade data on separate correspondents' trades completely ''crossed'' on a clearing member's books are not reported at all to the clearing corporation; and (iii) *summarization*, which is a technique in which the clearing broker nets all trades in a single CUSIP by the same correspondent broker into fewer submitted trades.

[4] GSD Rule 11, Netting System, Section 3, Obligation to Submit Trades, currently provides that each netting member must submit to FICC for comparison and netting data on all of its non-repo trades: (including trades executed and settled on the same day and trades executed between it or an Executing Firm on whose behalf it is acting) with Comparison-Only Members or with other Netting Members (or an Executing Firm on whose behalf it or another Member is acting) that are eligible for netting pursuant to these Rules. * * * If the Corporation determines that a Netting Member has, without good cause, violated its obligations pursuant to this Section, such Netting Member may be reported to the appropriate regulatory body, put on the Watch List pursuant to Rule 4, or subject to an additional fee.

In addition, Rule 5, Comparison System, Section 4, Submission Size Alternatives, essentially provides that every non-GCF Repo trade must be submitted to FICC ''in the full size and in the exact amount in which the trade was executed.''

3. Legal Risk

Failure of eligible activity to be submitted to FICC increases systemic risk to the clearance and settlement system for Government securities to the extent that these practices reduce the number of trades and provide for clearly enforceable netting rights in the event of member insolvency. In an insolvency proceeding of a netting member of the GSD under U.S. law, the clearing organization netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA'') afford clear netting rights to the GSD as a registered securities clearing agency. The United States Bankruptcy Code (''Code'') and the Federal Deposit Insurance Act (''FDIA''), to the extent applicable, also provide a number of protections to registered securities clearing agencies such as FICC. Although FDICIA, the Code, and the FDIA also provide similar safe harbors protecting netting rights with respect to certain securities contracts when not submitted to and novated through the GSD and other registered clearing agencies, their applicability is highly dependent upon the types of entities involved and the nature and adequacy of bilateral documentation.

Thus, pre-netting activity has the potential to increase risk absent the capacity for comprehensive monitoring to ensure that such documentation and entities are in fact used throughout the Government securities marketplace.

Furthermore, as a practical matter, to the extent that there are any ambiguities in the application of relevant netting or close-out rights, FICC would expect that in general a bankruptcy court or other insolvency tribunal would be more deferential to close-out and netting by a registered securities clearing agency such as FICC than it would be to close-out and netting by another market participant.

4. Resolution of Fails Problems

The failure of netting members to submit eligible trades to FICC decreases the ability of FICC to assist in the resolution of fail problems. The significant fail problem incurred by the industry over the past year with regard to the May 2013 10-Year Note, and similar situations that may occur in the future, likely could be mitigated by submission of eligible data on behalf of non-member affiliates of GSD members by allowing FICC to identify and resolve round robin fail scenarios involving these affiliates.

The failure of FICC to receive all eligible trading activity of an active market participant denigrates FICC's vital multilateral netting process and leads to systemic risk and to FICC not being in as good a position to prevent a market crisis. Given the enormous and growing amount of activity in the government securities marketplace and resultant huge settlement risks, the proposed trade submission requirements and pre-netting prohibitions are the logical next steps for enhancing FICC's netting and risk management processes and ensuring that FICC can continue to perform its vital risk management role for the Government securities marketplace.

As a result, FICC is proposing to broaden its trade submission standards by requiring the submission of data on trades executed or cleared and guaranteed as to their settlement by certain affiliates of members.[5] The proposed rule change also makes explicit that these affiliate trades must be submitted on a trade-by-trade basis as executed. This would advance the goal of having every active Government securities market participant which is a GSD netting member, or an active affiliate of a GSD netting member, submit or have submitted on its behalf its eligible activity to the GSD on a trade-for-trade basis for netting, risk management, and guaranteed settlement. It would also put the Government securities marketplace on a more equal footing with other markets where the presence of exchange and/or regulatory confirmation or price transparency requirements effectively mandates that all eligible trades be submitted to the clearing corporation.

Specifically, the proposed rule change would apply to a GSD member's non-member affiliates that are registered broker-dealers, banks, or futures commission merchants organized in the United States (''covered affiliates''). The proposed rule change would require members to submit, on a trade-by-trade basis, eligible trades, both buy-sells and repos, executed by their covered affiliates with other netting members or the other members' covered affiliates. The proposed rule change would also require members to submit, on a trade-by-trade basis, eligible trades cleared and guaranteed as to their settlement by their covered affiliates. The proposed rule change is limited to covered affiliates because these are the types of entities that comprise the majority of GSD netting members, and the failure to submit trades executed by registered broker-dealers, banks, and futures commission merchants organized in the United States has given rise to the systemic risk concerns discussed above.

It is important to note that covered affiliates will not be required to join FICC as members. As such, FICC is affording members and their affiliates the flexibility of choosing to have their trades processed by FICC either through direct membership or through a correspondent clearing relationship with an affiliate or other entity. In addition, the proposed rule filing would exempt the following from its coverage, which FICC believes do not raise systemic risk concerns of the type described above: (1) An affiliate that engages in *de minimis* eligible activity, which would be defined as less than an average of 30 or more eligible trades per business day during any one-month period within the prior year; (2) trades executed between a member and its affiliates or between affiliates of the same member; and (3) trades whose submission to FICC would cause the member to violate an applicable law, rule, or regulation.

The proposed rule filing would provide that failure to abide by the new trade submission requirements would trigger the disciplinary consequences currently in the GSD rules, which can ultimately result in termination of membership.[6]

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to FICC because the proposed rule change will reduce systemic risk in the government securities marketplace and therefore facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been

[5] Trades that the affiliate clears for another entity but does not guarantee the settlement of will be excluded from the trade submission requirement.

[6] The disciplinary consequences of GSD Rule 48 are being referred to explicitly in this rule filing to emphasize to members the importance of this proposed rule change and to remind members that violations of the GSD's rules, whether of the proposed rule upon Commission approval or other GSD rules, may lead to serious disciplinary consequences, including termination of membership.

[7] 15 U.S.C. 78q–1.

solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2004–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2004–15. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *www.ficc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2004–15 and should be submitted on or before November 26, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3006 Filed 11–3–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50605; File No. SR–MSRB–2004–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Create Real-Time Transaction Price Service and Propose Annual Subscription Fee

October 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2004, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the SEC a proposal to create the Real-Time Transaction Price Service (''Real-Time Service'' or ''Service'') to disseminate municipal securities transaction prices in real-time. An annual fee of $5,000 is proposed for a subscription to the Service. The Service would be part of the MSRB's Real-Time Transaction Reporting System, which is planned for implementation in January 2005. The text of the proposal is set forth below.

* * * * *

Real-Time Transaction Price Service

In January 2005, the MSRB plans to begin operation of the Real-Time Transaction Price Service to disseminate municipal securities transaction prices in real-time. The Service will be available by subscription for an annual fee of $5,000 and will be a part of the MSRB's Real-Time Transaction Reporting System (''RTRS''). RTRS will bring real-time price transparency to the municipal securities market and will make other improvements in the transparency and market surveillance functions of the MSRB's current transaction reporting program.

Description

The Service will be available by subscription and will provide a real-time stream of data representing municipal securities transaction reports made by brokers, dealers and municipal securities dealers (''dealers'') to RTRS.[3] After receipt of a trade report from a dealer, RTRS will automatically check the report for errors, ensure that it is a valid trade report for dissemination, appropriately format the report, and make it available for immediate electronic transmittal to each subscriber.[4]

The real-time data stream will be in the form of messages and will be available either over the Internet or by leased line, at the subscriber's option.[5] The subscriber must use either the MQ Series[6] or a TCP Socket connection for messaging with RTRS. Messages representing trade reports will be sent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Modifications and cancellation messages submitted by dealers will also be disseminated in real time.

[4] The MSRB anticipates that, during peak traffic periods, these automated functions will be accomplished within two minutes, and during lighter periods will be accomplished within a few seconds.

Certain trade reports made by dealers, which are coded by the dealers to indicate that the trade is for a specific reason not done at a market price, will not be disseminated but will be available to regulators as part of the surveillance function offered by RTRS. Certain other types of ''transactions'' that are required to be reported exclusively for audit trail purposes (relating to clearing brokers and their correspondents in certain fully-disclosed clearing arrangements where the correspondent does not take a principal position) also will not be disseminated but will be available to regulators.

[5] Subscribers will be responsible for all telecommunications charges for leased lines.

[6] To receive real-time trade messages via MQ Series, subscribers must license and configure their own MQ software.

out by the Service based on the order that they are received at RTRS, *i.e.*, on a ''first in-first out'' basis.[7] The Service also will offer a ''Day Replay'' file containing all messages sent during the day, in case a subscriber needs to check its records for completeness of recovery from communication breaks.[8]

Hours of Operation. The ''RTRS Business Day,'' during which time dealers are required by Rule G–14 to submit trade reports within 15 minutes of execution, begins at 7:30 a.m. and ends at 6:30 p.m.[9] However, RTRS will actually accept, and the Service will disseminate, any trade reports received between 7 a.m. and 8 p.m. (''RTRS 'Window' Hours'').[10] Transaction reports submitted to RTRS after 8 p.m. will not be processed by RTRS but will be pended for processing and dissemination at 7 a.m. the next business day.[11]

Transaction Data Disseminated. The data contained in each transaction price report sent to subscribers is discussed in detail in the RTRS filing.[12] It will include the same transaction information now disseminated in the MSRB's existing overnight batch system of transaction reporting, with additional data elements that have been added for real-time transaction reporting. The specific items of information that will be disseminated are:

Message Type

Type of message sent in the real-time broadcast (*i.e.*, a trade message, a ''heartbeat'' message or a system message). Heartbeat messages will be sent once every 60 seconds in the absence of real-time transaction messages to indicate that the connection is working properly but that there are no messages to send. System messages will be sent to indicate the daily open and close of the RTRS real-time subscriber service and to notify subscribers if publishing will be intentionally interrupted during system hours (*e.g.*, the markets have been closed because of extraordinary circumstances).

Sequential Number

Unique sequential number of the trade message. If more than one message has been published for a trade due to modification or cancellation, the trade is uniquely identified by the RTRS ID described below.

RTRS Control Number

The RTRS ID for the transaction. This may be used to apply subsequent modifications and cancellations to an initial transaction.

Trade Type Indicator

Type of trade: An inter-dealer trade, a purchase from a customer by a dealer, or a sale to a customer by a dealer.

Transaction Type Indicator

An indicator showing whether the message is a new transaction, or modifies or cancels a previously disseminated transaction.

CUSIP

The CUSIP number of the issue traded.

Security Description

Text description of the security obtained from the CUSIP Service Bureau.

Dated Date

Dated date of the issue traded obtained from the CUSIP Service Bureau.

Coupon (If Available)

Interest rate of the issue traded (blank for zero-coupon bonds) obtained from the CUSIP Service Bureau.

Maturity Date

Maturity date of the issue traded obtained from the CUSIP Service Bureau.

When-Issued Indicator (If Applicable)

Indicates whether the issue traded on or before the issue's initial settlement date obtained from Standard and Poor's.

Assumed Settlement Date (If Applicable)

For new issues where the initial settlement date is not known at the time of execution, this field is a date 15 business days after trade date. If this field is populated there will be no data in the settlement date field.

Trade Date

The date the trade was executed as reported by the dealer.

Time of Trade

The time of trade execution as reported by the dealer.

Settlement Date (If Known)

The settlement date of the trade if reported by the dealer will be shown. If this field is populated there will be no data in assumed settlement date field.

Par Traded

The par value of the trade as reported by the dealer will be shown. Trades with a par amount over $1 million will show par value as ''1MM+'' until five days after the stated trade date.

Dollar Price

The dollar price of the trade will be shown, as reported by the dealer. In most inter-dealer trade reports, the dealer is not required to report a dollar price and the dollar price shown is calculated by the MSRB from the final monies, par value and accrued interest reported for the trade.

Yield (If Applicable)

For customer trades, this field shows the yield of the trade as reported by the dealer. This normally is the same yield that would appear on a confirmation of the trade. For some customer trades (*e.g.*, trades defaulted securities, certain securities with variable interest rates) a yield cannot be reported by the dealer. On inter-dealer trades, yield is not generally reported by the dealer and is not shown.

Broker's Broker Indicator (If Applicable)

An indicator used in inter-dealer transactions that were executed by a broker's broker, including whether it was a purchase or sale by the broker's broker.

Weighted Price Indicator (If Applicable)

An indicator that the transaction price was a ''weighted average price'' based on multiple transactions done at

[7] If a subscriber detects that a message or a series of messages was missed during the day, the subscriber can request a trade message replay or ''snapshot.''

[8] The MSRB also maintains a hot-site from which it will provide real-time feed subscribers with a second source for the feed in the event that it can no longer be broadcast from the RTRS primary site.

[9] All times given are in Eastern Time.

[10] The RTRS ''window'' hours provide extra time before the Business Day and after the Business Day for dealers that may need to report late trades or correct mistakes that are discovered after the close of the Business Day. The 8 p.m. closing time for the window is intended to allow time for certain kinds of trades that, pursuant to Rule G–14, are permitted to be reported at the ''end of day'' for operational reasons (*e.g.*, syndicate trades executed at list price). These can be reported up until 8:00 p.m. when the RTRS ''window'' closes.

[11] In addition, at 7 a.m. RTRS will send modifications showing exact par values for transaction that were initially broadcast with a par value of ''1MM+.'' As described in the RTRS filing, because of concerns regarding liquidity, transactions with a par value exceeding $1 million will initially be disseminated with a par value of ''1MM+.'' Five business days after trade date, the actual par value will be shown.

[12] File No. SR–MSRB–2004–02 (June 1, 2004); *see also* ''Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G–14 and G–12(f),'' MSRB Notice 2004–13 (June 1, 2004), at *www.msrb.org*. The SEC approved this filing on August 31, 2004, in Securities Exchange Act Release No. 50294; *see also* ''Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination,'' MSRB Notice 2004–29 (Sept. 2, 2004), at *www.msrb.org*.

different prices earlier in the day to accumulate the par amount needed to execute an order for a customer.

Syndicate Price Indicator (If Applicable)

An indicator showing that the transaction price was reported as a trade in a new issue by a syndicate manager or syndicate member at the list offering price on the first day of trading.

RTRS Broadcast Date

The date the message was published to subscribers.

RTRS Broadcast Time

The time the message was first disseminated to subscribers.

Version Number

Version number of the message or file format used in the message or file.

Subscription Fee

The Real-Time Service will be available by subscription for an annual fee of $5,000.[13] Subscribers will be allowed to re-disseminate transaction data to an unlimited number of their own customers or clients at no additional charge. By not charging for or restricting re-distribution of the transaction data, the MSRB wishes to encourage information vendors—and various other entities that make securities data available to members of the securities industry and the public—to use the transaction data in their products and services. The MSRB will also encourage those parties to re-disseminate the data, either in its original form or with enhancements to address the specific needs of specific data users.[14] Through this approach, the MSRB anticipates that it will be possible for a typical individual investor to obtain the transaction data that is relevant to his or her investments for free or at a very modest cost.[15] After its first year of operation, the MSRB will review the usage of the real-time data feed to ensure that this goal is being met and that the data is readily available to municipal market participants and others who need the data.

Other Transparency Reports Under RTRS

In addition to offering the Real-Time Service, RTRS will continue to provide the primary transparency reports that have been developed within the current transaction reporting program. The data fields in these products will be modified for consistency with the real-time transaction data fields noted above and formatted to reflect that the data is being disseminated in files containing multiple transactions, rather than in real-time, ''trade by trade,'' messages.[16]

The existing ''Trade Detail Report'' (also known as the ''T+1 Report'') contains the trade reports for a specific trade date and is made available at approximately 6:00 a.m. on the business day following trade date (''T+1''). It is provided in the form of an electronic file and is made available over the Internet. After RTRS is operational, the Trade Detail Report will be reformatted and renamed the ''T+1 Transaction Price Service.'' Subscriptions will remain free to any interested person.

The existing ''Daily Comprehensive Report'' also is used to disseminate trade reports for a specific trade date, but is made available five business days after that trade date (''T+5'').[17] In RTRS, this service will be renamed the ''Comprehensive Transaction Price Service.'' The service will be made available exclusively through electronic file download over the Internet in the same format and manner as the T+1 Transaction Price Service. As is the case for the Comprehensive Reports produced today, the trade records in the new comprehensive service will: (i) Include exact par values for those transactions with a par value over $1 million; (ii) show all late trade reports made after the specified trade date, up until the date of dissemination; and (iii) show the effect of modifications or cancellations submitted by dealers after trade date. The annual fee for this service will be $2,000—the same fee currently charged for the existing Comprehensive Reports. Under RTRS, subscribers to the Real-Time Price Dissemination Service will receive a subscription to the Comprehensive Price Data Service at no additional charge.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 31, 2004, the SEC approved a proposed rule change relating to the MSRB's implementation of real-time transaction reporting and price dissemination—the Real-Time Transaction Reporting System or ''RTRS.''[18] That rule change will become effective in January 2005, at which time the MSRB plans to begin disseminating transaction data electronically in real time. Also at that time, dealers will be required to report transactions in municipal securities within 15 minutes of the time of trade execution (instead of by midnight on trade date, as is currently required).[19]

[13] The $5,000 subscription price will cover the administrative and technical costs associated with disseminating data and supporting subscription accounts. The MSRB is not attempting to levy revenues from the Service to cover all RTRS costs.

[14] Although the transaction data collected by the MSRB is not restricted with respect to re-dissemination, there are certain restrictions on use of the proprietary ''CUSIP numbers and CUSIP Securities Descriptions.'' These are contained within the Subscription Agreement for the Service.

[15] The MSRB, for example, has received an indication from The Bond Market Association (''BMA'') that the real-time data will be made available in real-time on the BMA's free Web site (*www.investinginbonds.com*) which contains information on the fixed income markets.

[16] Approximately six months after RTRS becomes operational, the MSRB will retire certain redundant reports, and will combine the monthly and daily comprehensive reports into one service.

[17] Subscribers to the T+5 Report also have access to a T+20 Report that contains transactions showing the effects of any modifications received at RTRS since the T+5 Report was produced. Data formats in reports created before RTRS became operational may be those that were in use at the time they were created. Any interested party may contact the MSRB for technical information about these older reports.

The MSRB also currently makes a ''Monthly Comprehensive Report'' available. Upon SEC approval of File No. SR–MSRB–2004–05 (September 15, 2004), transaction data provided by this service will continue to be made available through the MSRB's proposed Historical Data Product. *See also* ''Notice of Proposed Rule Change to Offer New Historical Data Product,'' MSRB Notice 2004–30 (Sept. 15, 2004), at *www.msrb.org.*

[18] Exchange Act Release No. 50294 (August 31, 2004); *see* ''Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination: Rules G–12(f) and G–14,'' MSRB Notice 2004–29 (September 2, 2004), at *www.msrb.org.*

The text of the rule change can be found, along with a description of the RTRS facility, in the MSRB's notice announcing its filing with the SEC. *See* ''Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G–14 and G–12(f),'' MSRB Notice 2004–13 (June 1, 2004), at *www.msrb.org.*

In its RTRS filing, the MSRB indicated that it would file with the SEC the specific implementation date in January 2005 for the beginning of RTRS operations. The MSRB expects to do this in November 2004 when more is known about the progress of dealer certification testing. The RTRS filing included rule amendments that require most dealers to schedule their certification testing prior to October 1, 2004.

[19] The RTRS filing included an amendment to Rule G–14, which will become effective

This is designed to increase price transparency in the municipal securities market and to enhance the surveillance database and audit trail used by enforcement agencies.[20] The MSRB is filing this proposed rule change to describe the proposed RTRS service for the dissemination of real-time transaction prices, which is named the Real-Time Transaction Price Service (the ''Service''), and the proposed subscription fee for the Service.

The MSRB proposes to charge $5,000 for an annual subscription to the Service. The MSRB encourages the redistribution of the data obtained through RTRS and believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions. Toward this end, the MSRB will not impose a charge on subscribers for such redistribution. The MSRB anticipates that information vendors and other entities that make securities data available to the securities industry and the public will subscribe and re-disseminate the data, either in an unmodified form, or with enhancements, for a relatively low cost or for free. After its first year of operation, the MSRB will review the usage of the real-time data feed to ensure that the data is being made available in a cost-effective manner to municipal market participants and others who need the data.

Subscribers will be able to choose one of two telecommunications methods: leased telephone line or Internet. Subscribers will also be permitted to choose one of two means of receiving real-time messages: via a proprietary application program for electronic message transmission called ''MQ,'' or a non-proprietary ''TCP Socket'' connection. Subscribers will be responsible for the cost of their telecommunication choice and for establishing and maintaining ''firewalls'' to keep computer systems secure.

The MSRB currently makes several kinds of transaction reports available to the public through its Transaction Report System:[21]

The Inter-Dealer Report has been available since January 23, 1995, and contains summary data about reported inter-dealer transactions for issues that traded four or more times in one day. The data is made available the morning after the transactions are made, and is available at an annual subscription rate of $15,000.

The Combined Report has been available since August 24, 1998, and contains summary data for reported transactions in issues that traded four or more times in the inter-dealer and the dealer/customer market. The data is made available the morning after the transactions are made, and is available at an annual subscription rate of $15,000.

The Trade Detail Report became available on January 19, 2000, and contains information on all reported transactions in municipal securities. It is also made available the morning after the transactions were made. This report is available to subscribers free of charge. Data in this report differs from the comprehensive reports described below in that trades in municipal securities over $1 million in par amount show only ''+$1MM'' on the trade detail report, but trades on the comprehensive reports show actual par for all trades.

The Monthly Comprehensive Report has been available since October 25, 2000, and contains information on all transactions in municipal securities. It is available to subscribers for $2,000 a year on a delayed basis, once a month, covering the preceding month's trading.

The Daily Comprehensive Report has been available since November 1, 2001, and contains daily information on all transactions in municipal securities that occurred one-week prior (''T+5 Report''). It is available to subscribers for $2,000 a year. This report includes a monthly comprehensive report of transactions done 20 business days prior (''T+20 Report'') and shows any modifications received at RTRS since the T+5 Report was produced.

After RTRS becomes operational in January 2005, the MSRB will continue producing these data products and modify them as necessary to reflect new data elements in RTRS trade reports. However, approximately six months thereafter, the MSRB intends to retire the inter-dealer and combined reports, and combine the monthly and daily comprehensive reports into one service.[22] The MSRB believes that this transition period should provide ample time for those subscribers who wish to continue receiving the data through the new products to make the minor formatting and other changes necessary to receive such information.[23] In the interim, the MSRB will not accept any new subscribers to these two products. The MSRB believes that the data products that will be available through RTRS will offer more comprehensive and timely information in a more cost-effective manner.[24] As noted above, the MSRB will not charge subscribers for the redistribution of data; the MSRB believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions, and therefore strongly encourages the redistribution of data obtained through RTRS.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[25] which requires that the rules of the MSRB shall ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and

concurrently with the operation of RTRS, that will require dealers to report most municipal securities transactions to the MSRB within 15 minutes of the time of trade, rather than by midnight on trade date, as is currently required. For operational reasons, the rule will allow dealers more than 15 minutes to report certain kinds of transactions. These transactions still will be reported to subscribers immediately upon receipt at RTRS.

[20] The RTRS filing noted that certain trade reports made by dealers, which are coded by the dealers to indicate that the trade is for a specific reason not done at a market price, will not be disseminated but will be available to regulators as part of the surveillance function offered by RTRS. The RTRS Notice also noted that certain other types of ''transactions'' that are required to be reported exclusively for audit trail purposes (relating to clearing brokers and their correspondents in certain fully-disclosed clearing arrangements where the correspondent does not take a principal position) also will not be disseminated but will be available to regulators.

[21] On September 16, 2004, the MSRB filed a proposed rule change with the SEC to offer a new transparency product containing historical trade data obtained through the Transaction Reporting System. Once approved by the SEC, the Historical Data Product would be available at a cost of $600 for a one-year collection of data on each inter-dealer trade reported since January 24, 1995, and each inter-dealer and customer trade reported since August 25, 1998. *See* ''Notice of Proposed Rule Change to Offer New Historical Data Product,'' MSRB Notice 2004–30 (Sept. 15, 2004), at *www.msrb.org.*

[22] There are currently two subscribers to these data products. The MSRB will provide at least six months' written notice to such subscribers, alerting them to the upcoming changes (*i.e.*, discontinuation of these data products) and offering to provide test files from the new system to help such subscribers conduct the necessary reformatting and reprogramming to receive the new data products.

[23] With minor formatting and programming changes, subscribers can actually receive, free of charge, the data currently offered through the inter-dealer and combined reports.

[24] Bulk files will be made available to subscribers over the Internet via FTP or on CD–ROM.

[25] 15 U.S.C. 78o–4(b)(2)(C).

the public interest * * *''[26] The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the Board has expanded the scope of its public transparency reports in several steps, and each step has provided industry participants and the public with more information about municipal securities transactions. This process has culminated in the RTRS system. The MSRB also has a long-standing policy of offering low-priced, wholesale information products that are designed to encourage information vendors and other organizations to enhance the data and redistribute it in a format that meets the needs of specific end-users. The MSRB does not intend to operate RTRS for profit, and historically has not attempted to compete with information vendors or other organizations in customizing or enhancing data and marketing products to end-users. This approach has allowed the MSRB to focus on collection of the data rather than on competing with the private sector in packaging and marketing the data. This approach also has allowed the MSRB to keep the costs of its information systems relatively low as part of its objective to maximize the distribution of information, thereby enhancing transparency in the municipal securities market. The MSRB encourages the redistribution of the data obtained through RTRS and believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2004–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2004–06 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3007 Filed 11–3–04; 8:45 am]

BILLING CODE 8010–01–P

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50602; File No. SR–NASD–2004–152]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Minor Modifications to the Nasdaq Opening Process for Nasdaq-Listed Stocks

October 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing the proposed rule change to modify in four ways the opening process for Nasdaq securities to: (1) Open the trading of Nasdaq stocks that have been the subject of a trading halt using the same process by which it will open trading at 9:30 a.m. for Nasdaq stocks that are not designated to participate in the Opening Cross; (2) amend the last tie-breaker that will be used to determine the price at which the Nasdaq Opening Cross will occur; (3)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

suspend the cancellation or modification of Regular Hours Orders that are entered into the Nasdaq Market Center at 9:28 a.m.; and (4) modify the process for calculating the Nasdaq Official Opening Price (''NOOP''). The text of the proposed rule change is set forth below.[5] Proposed new language is in *italics*; proposed deletions are in [brackets].[6]

* * * * *

4704. Opening Process for Nasdaq-Listed Securities

(a) Definitions. For the purposes of this rule the term:

(1) No Change.

(2) The Order Imbalance Indicator shall disseminate three prices, defined as follows:

([a]*A*) ''Inside Match Price'' shall mean:

(i) No Change.

(ii) No Change.

(iii) If more than one price exists under subparagraph (ii), the Inside Match Price shall mean the price that minimizes the distance from the *bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.* [previous Nasdaq official closing price.]

([b]*B*) No Change.

([c]*C*) No Change.

(3)–(7) No Change.

(8) ''Regular Hours Orders'' shall mean any order that may be entered into the system and designated with a time-in-force of IOC, DAY, or GTC. Regular Hours Orders shall be available for execution only during the opening and then during normal trading hours. Regular Hours Orders shall be designated as ''Early Regular Hours Orders'' if entered into the system prior to 9:28 a.m. and designated as ''Late Regular Hours Orders'' if entered into the system at 9:28 a.m. or after. *Beginning at 9:28 a.m., requests to cancel or modify Regular Hours Orders shall be suspended until after completion of the Opening Cross at which time such requests shall be processed.*

(b) No Change.

(c) Nasdaq-listed securities that are not designated by Nasdaq to participate in the Nasdaq Opening Cross shall begin trading at 9:30 a.m. *or, in the case of Nasdaq-listed securities in which trading is halted pursuant to Rule 4120(a), at the time specified by Nasdaq pursuant to Rule 4120* in the following manner:

(1) At 9:30 *or at the time specified by Nasdaq pursuant to Rule 4120,* the system shall suspend processing as set forth in paragraph (b) in order to open and integrate Regular Hours orders into the book in time priority.

(2)–(4) No Change.

(d) Processing of Nasdaq Opening Cross. For certain Nasdaq-listed securities designated by Nasdaq, the Nasdaq Opening Cross shall occur at 9:30, and regular hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) No Change.

(2)

(A) No Change.

(B) No Change.

(C) If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the *bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.* [previous Nasdaq official closing price.]

(D) No Change.

(3) No Change.

(4) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has previously proposed to create two new voluntary opening processes—the Modified Opening Process and the Nasdaq Opening Cross—that together constitute the beginning of the trading day for all Nasdaq-listed securities. The Commission approved that proposal on September 16, 2004.[7] Through quality control and testing, Nasdaq has identified four minor modifications to the operation and rules governing the Nasdaq Opening Cross and Modified Opening Process that it believes would improve the fair and orderly opening of the market in Nasdaq-listed securities.

First, Nasdaq proposes to open the trading of Nasdaq stocks that have been the subject of a trading halt using the same process by which it will open trading at 9:30 a.m. for Nasdaq stocks that are not designated to participate in the Opening Cross. NASD Rule 4704(c) specifies that the opening process for stocks that are not included in the Opening Cross will begin at 9:30 a.m. Nasdaq inadvertently failed explicitly to permit stocks to open after 9:30 a.m., as can occur when trading has been halted due, for example, to material news or the release of an initial public offering.

Nasdaq believes that the Modified Opening Process (''MOP''), which the Commission has already found to be consistent with the Act should be employed equally for all non-crossing stocks, and that Nasdaq's rules should explicitly so state. Nasdaq believes that the MOP would improve the opening of trading following a trading halt under NASD Rule 4120. The MOP is designed to create an unlocked and uncrossed bid and offer for the opening of trading, and to execute quotes and orders that would lock or cross the market in a fair and orderly manner. The MOP would work identically and equally well at the open after a trading halt, regardless of whether the halt is initiated under NASD Rule 4120(a)(1), (4), (5), (6), or (7).

Second, Nasdaq proposes to amend the last tie-breaker that will be used to determine the price at which the Nasdaq Opening Cross will occur. In its recently-approved proposal, Nasdaq specified that the Nasdaq Opening Cross would occur at the price that maximizes the number of Market on Open (''MOO''), Limit on Open (''LOO''), Opening Imbalance Only (''OIO''), Early Regular Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed or, if a tie occurs, the price that minimizes any Imbalance or, if another tie occurs, the price that

[5] The Commission made the following corrections on Nasdaq's behalf to the proposed rule text: (1) An internal cross reference in Rule 4704(a)(2)(A)(iii) was corrected; and (2) the current text of Rule 4704(c)(1) was corrected to include omitted punctuation. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division of Market Regulation (''Division''), Commission (October 21, 2004).

[6] The proposed rule change is marked to show changes from the rule text approved by the Commission in Securities Exchange Act Release No. 50405 (September 16, 2004), 69 FR 57118 (September 23, 2004) (SR–NASD–2004–071). This sentence was corrected by the Commission to reflect the fact that the NASD Manual available at www.nasd.com has not been updated to include the rule text for NASD Rule 4704. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (October 18, 2004).

[7] See, Securities Exchange Act Release No. 50405 (September 16, 2004), 69 FR 57118 (September 23, 2004) (SR–NASD–2004–071).

minimizes the distance from the previous Nasdaq official closing price.

Nasdaq has determined that referring to the previous official closing price in this manner could produce an unpredictable Opening Cross Price if there is substantial price fluctuation after the previous day's close. Nasdaq has determined that the last Opening Cross tie-breaker should instead be the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m. This would minimize price fluctuations and leverage the additional transparency into the opening process that has been created by the Nasdaq Order Imbalance Indicator. Nasdaq believes that this outcome would be consistent with the Act and would serve investors better than the current rule.

Third, Nasdaq proposes to suspend at 9:28 a.m. the cancellation or modification of Regular Hours Orders that are entered into the Nasdaq Market Center. Currently, NASD Rule 4704 defines Regular Hours Orders either as ''Early Regular Hours Orders'' if entered into the system prior to 9:28 a.m. or as ''Late Regular Hours Orders'' if entered into the system at 9:28 a.m. or after. The current rule does not address the cancellation or modification of Regular Hours Orders as it does with MOO, LOO, and OIO orders.

In order to preserve the stability and predictability of the Nasdaq Opening Cross, Nasdaq proposes to suspend, as opposed to prohibit, the cancellation or modification of all Regular Hours Orders beginning at 9:28 a.m. As with MOO, LOO, and OIO Orders, the late cancellation or modification of a large Regular Hours Order that would otherwise participate in the Opening Cross could substantially impact the Opening Cross Price, surprising market participants, diminishing market quality and potentially harming investors.

Nasdaq would not prohibit the cancellation or modification of Regular Hours Orders, but rather would suspend the effectiveness of such cancellation and modification requests until after the completion of the Nasdaq Opening Cross. If a Regular Hours Order is not executed in the Nasdaq Opening Cross, the cancellation or modification request would immediately be processed in accordance with its terms and the order modified or returned to the entering party.

Fourth, Nasdaq proposes to modify the process for calculating the Nasdaq Official Opening Price (''NOOP''). Currently, the NOOP is equal to the reported price of the first trade executed by the execution functionality of the Nasdaq Market Center based upon orders that are in queue when Nasdaq begins trading at 9:30 a.m. (''Opening Match''). If there is no Opening Match within five seconds after the system opens at 9:30 a.m., the NOOP is based upon the first, last sale eligible trade that is submitted to the trade reporting functionality of the Nasdaq Market Center.

Nasdaq proposes to change from five to fifteen seconds the length of time Nasdaq would wait for an Opening Match within Nasdaq's execution functionality before looking for a last sale eligible trade submitted to Nasdaq's trade reporting functionality. Nasdaq believes that this additional ten seconds is needed due to the added time that may elapse while Nasdaq's execution functionality is processing the Nasdaq Opening Cross. In other words, if Nasdaq were to apply the current five-second standard and the Nasdaq's Opening Cross were to take more than five seconds to process, the Opening Cross price would not qualify as the NOOP. If the Opening Cross were to be processed sooner than fifteen seconds or, in the case of non-crossing stocks, the system were to execute a trade sooner than fifteen seconds, the NOOP would be calculated at that time rather than waiting the full fifteen seconds.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] in particular, in that Section 15A(b)(6) requires, among other things, that a national securities association's rules be designed to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in a more orderly opening for all Nasdaq stocks. The proposed rule change would create a fair, orderly, and unified opening for Nasdaq stocks, prevent the occurrence of locked and crossed markets in halted securities, and preserve price discovery and transparency that is vital to an effective opening of trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest,[10] it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow Nasdaq to conduct its planned testing and roll-out schedule for the modified opening without delay. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

[10] The Commission revised this section to add the representations on Nasdaq's behalf that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (October 21, 2004).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 7 CFR 240.19b–4(f)(6). The Commission notes that Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[13] For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–152 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–152. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–152 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3005 Filed 11–3–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. *Name of participating agencies:* The Selective Service System (SSS) and the Department of Education (ED).

2. *Purpose of the match:* The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service System Act [50 U.S.C. App. 462 (f)] are met.

3. *Authority for conducting the matching:* Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables ED to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et seq.*). Section 12(f) of the Military Selective Service Act, as amended [50 U.S.C. App. 462(f)], denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself for and submit to registration under Section 3 of the Military Selective Service System Act [50 U.S.C. App. 453] who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, Section 12(f)(2) of the Military Selective Service System Act specifies that any person required to present himself for and submit to registration under Section 3 of the Military Selective Service System Act must file a statement with the institution of higher education where the person intends to attend or is attending that he is in compliance with the Military Selective Service System Act. Furthermore, Section 12(f)(3) of the Military Selective Service System Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the HEA [20 U.S.C. 1091(n)], requires the Secretary to conduct data base matches with SSS, using common demographic data elements, to enforce the Selective Service registration provisions of the Military Selective Service Act [50 U.S.C. App. 462(f)], and further states that appropriate confirmation of a person's shall fulfill the requirement to file a separate statement of compliance.

4. *Categories of records and individuals covered:*

1. Federal Student Aid Application File (18–11–01). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year.

2. Selective Service Registration Records (SSS 10).

5. *Inclusive dates of the matching program:* Commence on January 1, 2005 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. *Address for receipt of public comments or inquires:* Richard S. Flahavan, Associate Director, Office of Public and Intergovernmental Affairs, Selective Service System.

Dated: October 28, 2004.

Jack Martin,

Acting Director.

[FR Doc. 04–24634 Filed 11–3–04; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF STATE

[Public Notice 4884]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals for Four (4) Study of the United States (U.S.) Institutes

Announcement Type: New Cooperative Agreements.

Funding Opportunity Numbers:

(1) Study of the U.S. Institute on Religious Pluralism—ECA/A/E/USS–05–03–RP.

(2) Study of the U.S. Institute on U.S. Foreign Policy—ECA/A/E/USS–05–03–FP.

(3) Study of the U.S Institute on Contemporary American Literature—ECA/A/E/USS–05–03–AML.

(4) Study of the U.S. Institute on American Politics and Political Thought—ECA/A/E/USS–05–03–AP.

Catalog of Federal Domestic Assistance Number: 19.418.

Dates:

Key Dates:

Application Deadline: January 10, 2005.

Executive Summary: The Branch for the Study of the U.S., Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations to develop and implement the Study of the United States Institutes listed above. These institutes, for a multinational group of 18 experienced university faculty, are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. The institutes should be designed as intensive, academically rigorous seminars for scholars from outside the United States and should have a strong central theme and focus. Each should also have a strong contemporary component.

The programs, which should be six weeks in length, will be conducted during the summer of 2005 and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location) and a study tour segment of not more than two weeks that should complement the learning gained during the academic residency segment.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau is seeking detailed proposals for four Study of the United States (U.S.) Institutes (listed at the beginning of this RFGP) from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

These Study of the U.S. Institutes should provide a multinational group of up to 18 experienced foreign university faculty with a deeper understanding of U.S. society and culture, past and present. Each institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, program content should be imaginatively integrated in order to elucidate the history and evolution of U.S. institutions and values, broadly defined. The program should also serve to illuminate contemporary political, social, and economic debates in American society.

Institutes are intended to offer foreign scholars whose professional work focuses in whole or in substantial part on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in institutions of higher learning abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should not only directly complement but should also extend the learning gained during the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and they should also include some opportunity for limited but well-directed independent research. Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. All Study of the United States Institute programs, regardless of their particular thematic focus, should seek to:

1. Provide participants with a survey of contemporary scholarship within the institutes governing academic discipline(s), delineating the current scholarly debate within the field. In this regard the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. It is expected that presenters from other institutions will be brought in, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content;

3. Give participants a multi-dimensional examination of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Ensure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Descriptions

(1) Study of the U.S. Institute on Religious Pluralism in the United States

This Institute should provide a multinational group of 18 experienced foreign university faculty with an opportunity to increase their understanding of American civilization and institutions through an examination of the American religious experience and its intersection with democracy. Employing a multi-disciplinary approach, drawing on fields such as history, political science, sociology, anthropology, law and others where appropriate, the program should explore both the historical and contemporary relationship between church and state in the United States; examine the ways in which religious thought and practice have influenced and been influenced by the development of American democracy; examine the intersections of religion and politics in the United States in such areas as elections, public policy, and foreign policy; and explore the sociology and demography of religion in the United States today, including a survey of the varieties of contemporary religious belief and their impact on American politics.

(2) Study of the U.S. Institute on U.S. Foreign Policy

The ''Study of the United States Institute on American Foreign Policy'' should provide a multinational group of 18 experienced foreign university faculty with a deeper understanding of how U.S. foreign policy is conceptualized and enacted with emphasis on the post cold war era. This institute should examine the intersection of ideas and structures in the development of U.S. foreign policy. While the program should review the domestic institutional foundations for U.S. foreign policy, the primary focus should be on the main philosophical traditions that have girded U.S. foreign policy; the grand strategies and frameworks that have been developed out of these philosophical trends; and, what actors—both governmental and non-governmental—shape U.S. foreign policy at various stages from its conceptualization to its enactment. An overarching goal of the program is to illuminate the relationship between U.S. policies and the political, social and economic forces in the United States that constitute the domestic context in which such policies are debated, formulated and executed. A thematic approach that examines how U.S. foreign policy has dealt with specific areas of concern over time, for example nuclear proliferation and weapons of mass destruction, democratization and humanitarian crises would be one way for an applicant to illuminate the continuities and changes in U.S. foreign policy. Ideally, the program should be structured in such a way as to give attention to U.S. policy both globally and in particular geographic areas and to examine the role of U.S. foreign policy within the context of international relations and international institutions.

(3) Study of the U.S. Institute on Contemporary American Literature

This program, designed for a multinational group of 18 experienced foreign university faculty, should focus on recent American literature and criticism. Its purpose is twofold: First, to explore contemporary American writers and writing in a variety of genres; second, to suggest how the themes explored in those works reflect larger currents within contemporary American society and culture. The program should explore the diversity of the American literary landscape, examining how major contemporary writers, schools and movements reflect the traditions of the American literary canon and, at the same time, represent a departure from that tradition, establishing new directions for American literature.

(4) Study of the U.S. Institute on American Politics and Political Thought

The ''Study of the United States Institute on American Politics and Political Thought'' should provide a multinational group of 18 experienced foreign university faculty with a deeper understanding of U.S. political institutions and major currents in American political thought by focusing on the interplay between ideas and institutions in shaping the contemporary American polity. The institute should provide an overview of the origins (constitutional foundations), development and current functioning of the American presidency, Congress and the federal judiciary, however examination of political institutions might be expanded to include for example the two-party system, the civil service system, interest groups, or the welfare/regulatory state. The institute should also and simultaneously survey important currents in the history of American political thought, including but not limited to the political thought of the Founding period. In this context, the Branch for the Study of the U.S. is particularly interested in providing the foreign participants insight into competing strains in modern American political thought/culture, such as liberalism, republicanism (with a small ''r''), libertarianism, communitarianism, conservatism, neo-conservatism, etc. The institute should review the provenance and trajectory of these different intellectual strands or movements, and highlight how they have intersected with American political institutions to shape public discourse and public policy formulation in the contemporary United States.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, programs should be designed for highly-motivated and experienced multinational groups of 18 post-secondary educators, and, in some cases, government officials. Participants will be interested in taking part in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions and school systems.

Participants will be diverse in terms of age, professional position, and travel experience abroad. Participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed as well as from institutions that are just beginning to introduce courses and programs focusing on the United States. While participants may not have in-depth knowledge of the particular institute program theme, they will likely have had exposure to the relevant discipline and some experience teaching about the United States.

Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. A final list of participants will be sent to the host institution. Host institutions do not participate in the selection of participants.

Program Dates: Ideally, the programs should be 44 days in length (including participant arrival and departure days) and should begin in late June or early July 2005.

Program Guidelines: It is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. A syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for

the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Note: In a cooperative agreement, ECA/A/E/USS is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/USS activities and responsibilities for this program are as follows: ECA/A/E/USS will participate in the selection of participants, will exercise oversight with one or more site visits and will debrief participants. ECA/A/E/USS may also require changes in the content of the program as well as the activities proposed either before or after the grant is awarded.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY–05.

Approximate Total Funding: $1,040,000.

Approximate Number of Awards: 1 award per Institute (topic) for a total of four (4) awards.

Approximate Average Award: $260,000.

Floor of Award Range: $220,000.

Ceiling of Award Range: $260,000.

Anticipated Award Date: Pending availability of funds, March 15, 2005.

Anticipated Project Completion Date: October 30, 2005.

Additional Information: Pending successful implementation of these programs and the availability of funds in subsequent fiscal years, it is ECA's intent to renew each of these grants for two additional fiscal years, before openly competing each one again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant per institute, each in an amount up to approximately $260,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) *Technical Eligibility:* All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

Failure to meet this criteria will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619–4557 and fax number (202) 619–6790, e-mail either *Meyersnl@state.gov* for funding numbers ECA/A/E/USS–05–03–RP, ECA/A/E/USS–05–03–FP, ECA/A/E/USS–05–03AML or *Bendapm@state.gov* for funding number ECA/A/E/USS–05–03–AP to request a Solicitation Package. Please refer to the correct Funding Opportunity Numbers located on the first page of this announcement and cited above when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Nancy L. Meyers at *meyersnl@state.gov* for Funding Opportunity Numbers ECA/A/E/USS–05–03–RP, ECA/A/E/USS–05–03–FP, ECA/A/E/USS–05–03AML or specify Program Officer Peter Benda at *Bendapm@state.gov* for funding number ECA/A/E/USS–05–03–AP on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and thirteen (13) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a.

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 U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI)

document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.

Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups).

Please note: Because the cooperative agreement prospectively to be awarded

under the terms of the present RFGP is likely to be of less than one year's duration, host institutions will not be expected to be able to demonstrate significant specific results in terms of participant behavior or institutional changes during the agreement period. Applicant institutions' monitoring and evaluation plans should, therefore, focus primarily on the first and more particularly the second level of outcomes (learning). ECA/A/E/USS will assume principal responsibility for developing performance indicators and conducting post-institute evaluations to measure changes in participant behavior as a result of the program(s), and effect of the program(s) on institutions, over time.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4 Describe Your Plans for Overall Program Management, Staffing, and Coordination with ECA/A/E/USS

ECA/A/E/USS considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

IV.3e. Please Take the Following Information Into Consideration When Preparing Your Budget

IV.3e.1.

Applicants must submit a comprehensive budget for the entire program. Awards should be up to approximately $260,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Based on a group of 18 participants, the total Bureau-funded budget (program and administrative) for this program should be up to approximately $260,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package may be up to approximately $110,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following

(1) Institute staff salary and benefits.
(2) Honoraria for Guest speakers.
(3) Participant *per diem*.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: Monday, January 10, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and thirteen (13) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS–05–03-[RP/FP/AML/AP], Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. The Branch for the Study of the U.S. may also retain outside independent consultants to review proposals in their particular field(s) of expertise. The feedback or input of any such consultants will be advisory only. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea/Plan:* The proposal narrative and appendices should demonstrate the complete integration of the two program modules

(academic and experiential) into a single program. Applicants should clearly explain how/why site visits, consultations, reading lists etc. were chosen and how they compliment the academic module and the program as a whole. The program should offer a balanced presentation of the subjects/issues covered, reflecting both the continuity of the American experience as well its diversity and dynamism inherent in it.

2. *Academic Residency Program Planning and Administration:* As a general proposition, proposals should demonstrate careful planning. The organization and structure of the academic residency component should be clearly delineated. A program syllabus, noting specific sessions and topical readings supporting each academic unit, should be included. The expectation is that these institutes be conducted as intensive graduate-level seminars. Plans for the academic residency segment should, therefore, avoid undue reliance on the ''lecture followed by question-and-answer session'' format, and incorporate panel presentations, working group assignments, group debates and other modalities designed to foster and encourage active learning and participation by all institute participants.

3. *Study Tour Planning and Administration:* The study tour travel component should not simply be a tour, but rather an integral and substantive part of the program, reinforcing and complementing the academic component. The proposal should explain how the site visits and presentations included in the study tour program relate to the Institute's learning objectives. Consideration should be given to assigning lighter readings during the study tour (*e.g.*, short articles, newspaper selections, etc.) related to planned study tour travel sessions. While visits to cultural institutions may certainly be included, the emphasis should be on meetings with scholars and other relevant professionals such as (*e.g.*) government officials, journalists, and literary critics who can substantively contribute to deepening the participants' understanding of issues and topics pertinent to the Institute's theme(s).

4. *Ability to Achieve Overall Program Objectives:* Due to the academic nature of this program, overall objectives can only be met if proposals exhibit originality and substance consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject disciplines of each institute. A variety of presenters reflecting diverse backgrounds and viewpoints should be invited to discuss their specific areas of expertise with the participants. Assigned readings likewise should provide opportunities for participants to be exposed to diverse responsible perspectives on the topics and issues to be explored.

5. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicant should highlight instances of diversity in their proposal.

6. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost-Effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. *Institutional Capacity:* Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented. Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

9. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign educators. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants* and *http://exchanges.state.gov/ education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory: (1) A final program and financial report no more than 90 days after the expiration of the award; Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV.

Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619–4557 and fax number (202) 619–6790, *Bendapm@state.gov* or *MeyersNL@state.gov* based on the funding opportunity number.

All correspondence with the Bureau concerning this RFGP should reference the appropriate Funding Opportunity Number given at the beginning of this RFGP and referenced again in section ''IV.1 Contact Information to Request an Application Package'' of this announcement.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 25, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24652 Filed 11–3–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4885]

Update on Current Universal Postal Union Issues

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Friday, November 19, 2004, to provide an update on current Universal Postal Union issues, including the results of the 23rd UPU Congress held in Bucharest, Romania from September 15 to October 5, 2004.

The briefing will be held from 1:30 p.m. until approximately 4:30 p.m., on November 19, in Room 1408 of the Department of State, 2201 C Street, NW., Washington, DC. The briefing will be open to the public up to the capacity of the meeting room of 50.

The briefing will provide information on the results of the UPU Congress and the upcoming January 2005 session of the UPU Postal Operations Council. Special attention will be paid to extra-territorial offices of exchange, terminal dues, and the creation of the Consultative Committee. Deputy Assistant Secretary of State Terry Miller will chair the briefing.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on November 19, 2004, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the main entrance of the Department of State at 22nd and C Streets, NW. Please note that under current security restrictions, C Street is closed to vehicular traffic between 21st and 23rd Streets. Taxis may leave passengers at 21st and C Streets, 23rd and C Streets, or 22nd Street and Constitution Avenue. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Dennis Delehanty at (202) 647–4197 or via e-mail at *delehantydm@state.gov.*

Dated: October 28, 2004.

Dennis M. Delehanty,

Director for Postal Affairs, Department of State.

[FR Doc. 04–24651 Filed 11–3–04; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City and Borough of Sitka, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for improved access to Sitka, Alaska. The project is located on Baranof Island within the Northern Panhandle Region of Southeast Alaska.

FOR FURTHER INFORMATION CONTACT: Edrie Vinson, Environmental Project Manager, Federal Highway Administration, Alaska Division, P.O. Box 21648, Juneau, Alaska 99802–1648, (907) 586–7418, fax: (907) 586–7420, e-mail: *edrie.vinson@fhwa.dot.gov* or Andy Hughes, Regional Planning Chief, Alaska Department of Transportation & Public Facilities (ADOT&PF), 6860 Glacier Highway, Juneau, Alaska 99801; (907) 465.1776, fax (907) 465.2016, e-mail *andy_hughes@dot.state.ak.us.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with ADOT&PF, will prepare an environmental impact statement (EIS) on a proposal to improve transportation access to the City and Borough of Sitka, Alaska. Sitka is on the west side of Baranof Island, and has unsheltered exposure to the Pacific Ocean. Currently, access to Sitka is limited to air service and service by Alaska Marine Highway System (AMHS) ferries and commercial freight. Strong tidal currents through Sergins Narrows in Peril Strait constrain AMHS ferry service and commercial marine freight service schedules. These scheduling issues affect Sitka and other Northern Panhandle communities that rely on marine transportation and freight services.

The Sitka Access EIS will evaluate alternatives to improve access to Sitka. The alternatives considered may allow for more convenient and frequent surface transportation at lower cost to the user and AMHS. The EIS will consider a range of alternatives

including: (a) No Action; (b) new road links between Sitka and new ferry/marine terminals on the east side of Baranof Island with ferry service links to other communities, and; (c) all marine alternatives linking directly to Sitka or to a transfer facility and then Sitka. Below is a brief description of several possible alternatives that may meet the goals of the proposed project.

(1) Constructing a new road from Sitka north and east to Rodman Bay and constructing and operating a new ferry/marine terminal with ferry service links to other communities. This would allow marine transportation and freight services to avoid the restrictive Sergins Narrows.

(2) Constructing a road due east of Sitka to Warm Springs Bay and constructing and operating a new ferry/marine terminal with ferry service links to other communities. Included in this road would be an approximately two-mile-long tunnel through mountainous terrain. This alternative would allow marine transportation and freight services to completely avoid the Peril Straits.

(3) Constructing an AMHS transfer facility on Chatham Strait where passengers and freight would disembark and re-board a vessel that is not restricted by the tidal currents in Sergins Narrows such as a fast shuttle ferry. These fast shuttle ferries would then connect to the existing Sitka Terminal.

(4) Fast Vehicle Ferry service linking Sitka to Juneau, Petersburg or other surrounding communities.

During the scoping process, the FHWA and the ADOT&PF will solicit input from the public and interested agencies on the alternatives to be considered and the nature and extent of issues and impacts to be addressed in the EIS and the methods by which they will be evaluated.

Questionnaires, public notices and newsletters describing the proposed action alternatives and soliciting comments will be sent to appropriate Federal, State, and local agencies, tribes, private organizations, and citizens who have previously expressed or are known to have interest in this proposal.

Public scoping meetings will be held between December 2004 and January 2005 at each of the following communities: Angoon, Baranof Warm Springs, Elfin Cove, Gustavus, Hoonah, Kake, Pelican, Port Alexander, Sitka, Tenakee Springs, Juneau and Petersburg. As the meeting dates approach, a public notice announcing the exact date, time and location of the meetings will be published in the *Juneau Empire, Sitka Sentinel, Petersburg Pilot,* and the *Capital City Weekly.* The comment period will be provided.

Contact information for people with special needs will be included in the public notice announcements.

Two agency scoping meetings, one in Juneau and one in Sitka, will be held in December 2004. Agency staff will be given an opportunity to express their concerns, ask questions, and provide written comment. The ADOT&PF will contact the agencies by mail with the exact date, time, and location of the meetings. The agency comment period will be provided.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 25, 2004.

Karen A. Schmidt,

Assistant Division Administrator, Juneau, Alaska.

[FR Doc. 04–24588 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Appointment of Members to the Legal Division Performance Review Board for Fiscal Year 2004

Under the authority granted to me as General Counsel of the Department of the Treasury, including the authority conferred by 31 U.S.C. 301 and Treasury Department Order No. 101–5 (revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board for Fiscal Year 2004:

James W. Carroll, Jr., who shall serve as Chairperson;

Thomas M. McGivern, Assistant to the General Counsel (Legislation, Litigation, and Disclosure);

Russell L. Munk, Assistant General Counsel (International Affairs);

Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);

Roberta K. McInerney, Assistant General Counsel (Banking and Finance);

Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);

Peter A. Bieger, Deputy Assistant General Counsel (Banking and Finance);

Daniel P. Shaver, Chief Counsel, United States Mint;

Robert M. Tobiassen, Chief Counsel, Alcohol and Tobacco Tax and Trade Bureau;

Barbara C. Hammerle, Chief Counsel, Office of Foreign Assets Control;

Judith R. Starr, Chief Counsel, Financial Crimes Enforcement Network; and

Brian L. Ferrell, Chief Counsel, Bureau of the Public Debt.

Dated: October 27, 2004.

Arnold I. Havens,

General Counsel.

[FR Doc. 04–24606 Filed 11–3–04; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
November 4, 2004

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 382
Nondiscrimination on the Basis of Disability in Air Travel; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2004–19482]

RIN 2105–AC97

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department proposes to revise its rule requiring nondiscrimination on the basis of disability in air travel to update, reorganize, and clarify the rule and to implement a statutory requirement to cover foreign air carriers under the Air Carrier Access Act.

DATES: *Comment Closing Date:* Comments must be received by February 2, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Please include the docket number of this document in all comments submitted to the docket. Written comments should be sent to Docket Clerk, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. For confirmation of the receipt of written comments, commenters may include a stamped, self-addressed postcard. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. Comments will be available for inspection at this address from 10 a.m. to 5:30 p.m., Monday through Friday. Comments can also be reviewed through the Dockets Management System (DMS) pages of the Department's Web site (*http://dms.dot.gov*). Commenters may also submit comments electronically. Instructions appear on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590. Phone 202–366–9310; TTY: 202–755–7687; Fax: 202–366–9313. E-mail: *bob.ashby@ost.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Organization

Congress enacted the Air Carrier Access Act (ACAA) in 1986. The statute prohibits discrimination in airline service on the basis of disability. Following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community, the Department issued a final ACAA rule in March 1990. Since that time, the Department has amended the rule ten times.[1] These amendments have concerned such subjects as boarding assistance via lift devices for small aircraft, and subsequently for other aircraft, where level entry boarding is unavailable; seating accommodations for passengers with disabilities; reimbursement for loss of or damage to wheelchairs; modifications to policies or practices necessary to ensure nondiscrimination; terminal accessibility standards; and technical changes to terminology and compliance dates.

The Department has also frequently issued guidance in a number of forms that interprets or explains further the text of the rule. These interpretations have been disseminated in a variety of ways: preambles to regulatory amendments, industry letters, correspondence with individual carriers or complainants, enforcement actions, web site postings, informal conversations between DOT staff and interested members of the public, etc. This guidance, on a wide variety of subjects, has never been collected in one place. Some of this guidance would be more accessible to the public and more readily understandable if it were incorporated into regulatory text. There have also been changes in the ways airlines operate since the original publication of Part 382. For example, airlines now make extensive use of web sites for information and booking purposes. Many carriers now use regional jets with a capacity of around 50 passengers for flights that formerly would have been served by larger aircraft. Preboarding announcements are not as universal a practice as they once were. Security screening has become a responsibility of the Transportation Security Administration (TSA), rather than that of the airlines. The Department has decided to update Part 382 to take changes in airline operations into account.

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) amended the ACAA specifically to include foreign carriers. The ACAA now reads in relevant part:

> * * * In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:
>
> (1) The individual has a physical or mental impairment that substantially limits one or more major life activities.
>
> (2) The individual has a record of such an impairment.
>
> (3) The individual is regarded as having such an impairment.

In response to the AIR–21 requirements, the Department on May 18, 2000, issued a notice of its intent to investigate complaints against foreign carriers according to the amended provisions of the ACAA. The notice also announced the Department's plan to initiate a rulemaking modifying Part 382 to cover foreign air carriers. Such a rulemaking is not a simple matter of saying that the existing rule applies as a whole to foreign air carriers. The Department believes that it is important to review Part 382 on a section-by-section basis to apply particular requirements to foreign air carriers in a way that achieves the ACAA's nondiscrimination objectives while not imposing undue burdens on foreign carriers.

The over 14-year history of amendments and interpretations of Part 382 have made the rule something of a patchwork, which does not flow as clearly and understandably as it might. Restructuring the rule for greater clarity, including using ''plain language'' to the extent feasible, is an important objective. To this end, Part 382 has been restructured in this NPRM, to organize it by subject matter area. Compared to the present rule, the text is divided into more subparts and sections, with fewer paragraphs and less text in each on average, to make it easier to find regulatory provisions. The proposal uses a question-answer format, with language specifically directing particular parties to take particular actions (e.g., ''As a carrier, you must * * *''). We have also tried to express the (admittedly sometimes technical) requirements of the rule in plain language.

The Department recognizes that some users, who have become familiar and comfortable with the existing organization and numbering scheme of Part 382, might have to make some adjustments as they work with the restructured rule. However, the structure of this proposed revision is consistent with a Federal government-wide effort to improve the clarity of regulations, which the Department has employed with great success and public acceptance in the case of other

[1] The dates and citations for these amendments are the following: April 3, 1990; 55 FR 12341 June 11, 1990; 55 FR 23544 November 1, 1996; 61 FR 56422 January 2, 1997; 62 FR 17 March 4, 1998; 63 FR 10535 March 11, 1998; 63 FR 11954 August 2, 1999; 64 FR 41703 January 5, 2000; 65 FR 352 May 3, 2001; 66 FR 22115 July 3, 2003; 68 FR 4088.

significant rules in recent years, such as revisions of our disadvantaged business enterprise and drug and alcohol testing procedures rules.[2] The Department seeks comment on the clarity, format, and style of the NPRM, as well as any economic or other impacts, and solicits suggestions for improving it.

Many of the provisions of the current Part 382 are retained in this rule with little or no substantive change. To assist readers in finding where current provisions are located in the proposed regulatory text, we have provided a reference table at the end of this preamble. Preamble language and other guidance issued by the Department concerning provisions of the existing rule text that have not been substantively changed may remain useful as guidance to carriers and passengers, and the Department can continue to rely on this information.

For U.S. carriers, many compliance dates (*e.g.,* with respect to including certain accessibility features on new aircraft, signing and implementing agreements with airports concerning boarding assistance provided by mechanical lifts) have already passed. The Department has restated these compliance dates in this proposed rule for the information of users. The Department seeks comment on whether doing so is necessary.

Section-by-Section Analysis

This portion of the preamble discusses each section of the proposed rule, highlighting where the Department proposes to make substantive changes from current Part 382.

Subpart A—General Provisions

Section 382.1 What Is the Purpose of This Rule?

This section makes a brief statement of the basic purposes of the ACAA and mentions that the ACAA's nondiscrimination and accessibility requirements apply to foreign as well as to U.S. carriers.

Section 382.3 What Do the Terms in This Rule Mean?

The definition of ''air carrier'' would change to include foreign as well as U.S. carriers. We would add a definition of the Air Carrier Access Act (ACAA) for clarity. The definition of ''air transportation'' would be changed to include the citation for the statutory definition of the term. We would add a definition of ''assistive device,'' consistent with concepts used in connection with the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973. We have also added a definition of ''direct threat,'' also drawn from the ADA and Department of Justice (DOJ) regulations implementing it. This concept is used in determining when it is appropriate to place restrictions on or deny service to individuals with disabilities. Here, as elsewhere in Part 382, we believe it is useful to harmonize ACAA practice with the ADA and other disability nondiscrimination authorities to the extent feasible.

The definition of ''facility'' would include a carrier's aircraft and any portion of an airport that the carrier owns, leases, or controls. ''Controls,'' for this purpose, is understood to include control of the selection, design, construction, or alteration of the facility, as well as actual operational control.

In the definition of ''qualified individual with a disability,'' the Department is introducing a new term, ''passenger with a disability,'' which the proposed rule will use in all situations in which a qualified individual with a disability is or is trying to be a passenger. ''Qualified individual with a disability'' would continue to apply to non-passengers as well. Given that this rule concerns travel, we seek comment on whether ''traveling'' should be added to the standard list of ''major life activities'' that is part of the definition of ''individual with a disability.'' Because of the important role that the Transportation Security Administration (TSA) now plays in air transportation, we are adding that agency to the definitions section.

Section 382.5 To Whom Do the Provisions of This Rule Apply?

This section contains some of the most important proposed changes in this NPRM, concerning how the Department will implement the AIR 21 amendment applying ACAA requirements to foreign air carriers. Paragraph (a) of the section, however, restates the existing application of the rule to U.S. carriers, regardless of where their operations takes place. As under the existing rule, a U.S. carrier's operations are subject to ACAA requirements whether they occur at a U.S. or foreign airport, or inside or outside of U.S. airspace (although certain airport accessibility obligations of air carriers apply only to their facilities at U.S. airports).

The Department believes that the intended scope of the statutory coverage of foreign air carriers, consistent with international law, focuses on traffic to or from the United States. In our view, it would exceed the scope of the Department's authority to attempt to apply ACAA requirements to all the operations of a foreign air carrier. Consequently, in paragraph (b) we propose to cover only those flights operated by a foreign air carrier that begin or end at a U.S. airport. Aircraft accessibility requirements would apply only to those aircraft that are used for these flights.

What is such a flight? We propose that it would be a continuous journey beginning or ending at a U.S. airport, using the same aircraft and/or flight number. For example, suppose a foreign carrier operates a nonstop flight between Paris and Chicago. This flight, and all the services connected with it, would be required to meet ACAA requirements. The aircraft would have to meet ACAA accessibility requirements.

In another example, suppose a foreign carrier operates service between New York and Cairo. The plane is refueled and gets a new crew in London, and continues on its way. Even though this is not a nonstop flight, it is a continuous journey on the same aircraft. Consequently, both segments of the flight would be covered under the ACAA. This would still be true even if there were a change of aircraft in London (sometimes called ''change of gauge''), as long as the flight number remained the same.

However, if there is a change of both aircraft and flight numbers, the picture would change. Suppose, for example, that a foreign carrier operates a nonstop flight from Washington, DC, to Frankfurt. A passenger then changes to a German domestic flight from Frankfurt to Berlin, with a different aircraft and flight number. The Washington-Frankfurt leg would be covered by ACAA requirements; the Frankfurt-Berlin leg would not. The aircraft used for the former would be subject to ACAA aircraft accessibility requirements; the aircraft used for the latter would not.

One of the situations this section addresses is ''code-sharing'' between a U.S. and foreign air carrier. A flight that, through a code-sharing agreement, is listed as the flight of a U.S. carrier is covered under the ACAA under the requirements that apply to U.S. carriers, even if the flight is operated with a foreign carrier's aircraft and crew. If a flight is advertised as the flight of a U.S. carrier, and the U.S. carrier or another party sells tickets to passengers on that basis, then it is reasonable for all the ACAA requirements applicable to other flights held out to the public as flights

[2] See 64 FR 5096, February 2, 1999 (for 49 CFR Part 26, disadvantaged business enterprise) and 65 FR 79462, December 19, 2000 (for 49 CFR Part 40, drug and alcohol testing procedures).

of that carrier to apply in this case as well. The U.S. carrier and its foreign carrier code-sharing partner would work out between themselves the details of how to meet the ACAA requirements.

Under this proposed section, if a foreign carrier operates an aircraft solely between foreign points, even if that aircraft is part of a code-shared flight or another covered flight (*e.g.*, the aircraft used for the Frankfurt—Berlin flight in the code-sharing example above, assuming the aircraft is used solely for operations between two points outside the U.S.), ACAA aircraft accessibility requirements would not apply to that aircraft. Other ACAA requirements (*e.g.*, service requirements) would apply, however.

The Department believes that these provisions would implement AIR–21 requirements without unduly burdening foreign carriers. The Department seeks comment on both the basic principle of this provision and on specific applications. In particular, given the variety of carriers, aircraft, destinations, airports, and relationships between U.S. and foreign carriers, the Department requests suggestions for any more specific provisions that might be necessary to apply this principle to the range of flights that this rule would cover, including any unusual situations in which its application could cause problems.

Section 382.7 What May Foreign Carriers Do If They Believe a Provision of a Foreign Nation's Law Precludes Compliance With a Provision of This Part?

The Department recognizes that foreign air carriers operate under a variety of laws and regulations. If an applicable foreign law or regulation precludes a foreign carrier from complying with a provision of the Department's ACAA rule, this section would allow the foreign carrier to petition the Department for a waiver of compliance with the ACAA provision.

As proposed, this waiver authority would apply only to a direct conflict between the ACAA and foreign law (*e.g.*, an ACAA provision requires aircraft to have movable aisle armrests; a legal requirement of Country X prohibits its aircraft from having movable aisle armrests). This waiver provision would not cover situations in which another country's laws or regulatory provisions may have different requirements from those of the ACAA, or give a foreign carrier discretion to take steps that differ from those of the ACAA, but do not actually preclude compliance with the ACAA. For example, the ACAA rule requires the use of boarding lifts at U.S. airports in almost all instances where level-entry boarding is not otherwise available. A foreign law might give carriers discretion to provide boarding by hand-carrying in these instances. This hypothetical law permits a boarding method that the ACAA regulations prohibit but does not prohibit the use of lifts, which the ACAA regulation requires. Under these circumstances, the foreign carrier would not be able to obtain a waiver. The Department seeks comment on whether broader waiver authority would be justified, and to what circumstances any broader waiver provision should apply.

It is important to note that a grant of a waiver under this provision would be contingent on the carrier providing an alternative means to effectively achieve the objective of the waived ACAA provision, consistent with the foreign law involved, or to demonstrate that no alternative means of achieving the objective was legally permitted. Also, a carrier's obligation to comply with the rule would not be stayed while a waiver request was pending. The carrier's authority to implement an alternative means to achieve the objective of an ACAA provision begins only when the Department approves the waiver.

We believe that this waiver provision may be very useful in addressing issues raised by legally binding aviation regulations of foreign nations. We are aware that, in many situations, foreign aviation regulations, rather than FAA or TSA rules, govern the actions of foreign carriers. In many cases, these foreign regulations are likely to be compatible with implementing Part 382. However, there may be instances in which a carrier believes that foreign regulations preclude it from implementing a provision of Part 382. In such cases, this waiver mechanism permits the Department to examine the basis for the asserted conflict between Part 382 and the foreign regulation. We believe having the Department make case-by-case decisions on waiver requests is an important safeguard of the rights of passengers with disabilities under Part 382.

We also note that, as an Office of the Secretary rule, Part 382 is subject to the exemption procedure of 49 CFR 5.11–5.13. Under these procedures, anyone may request an exemption from (or an amendment to) an Office of the Secretary rule. Long-standing DOT standards provide that a party requesting an exemption must demonstrate that unique or special circumstances, not contemplated in the rulemaking and not likely to be generalizable, make it impracticable for the party to comply with the rule as written. As with the waiver provision described above, the applicant would need to present alternative means of achieving the objective of the provision from which the exemption is sought.

Section 382.9 When Are Carriers Required To Begin Complying With the Provisions of This Rule?

This provision states that, as a general matter, carriers to which the rule applies must comply with its provisions beginning on the effective date of the rule. There is an important exception. Various individual provisions of the rule have delayed effective dates, especially for foreign carriers, to permit a reasonable phase-in period for requirements that are new to these carriers. We have designed these delayed effective dates to give foreign carriers phase-in periods equivalent to those that U.S. carriers had when the Department first issued its ACAA rule in 1990.

Subpart B—Nondiscrimination and Access to Services and Information

Section 382.11 What Is the General Nondiscrimination Requirement of This Rule?

Section 382.13 Do Carriers Have To Modify Policies, Practices, and Facilities To Ensure Nondiscrimination?

These sections carry forward the provisions of current § 382.7. While the language is modified for greater clarity, the Department is not proposing substantive changes in the present rule.

Section 382.15 Do Carriers Have To Make Sure That Contractors Comply With the Requirements of This Part?

This section carries forward the provisions of current § 382.9. In addition to modifying the language for greater clarity, the proposed language also contains statements codifying the Department's interpretations of this provision: that contractors (including airports) must meet the same requirements that would apply to the carrier itself in providing the services in question, that a contractor's noncompliance with its assurance of compliance is a material breach of its contract with the carrier, that the assurance must commit the contractor to complying with all applicable provisions of the rule with respect to all activities performed for the carrier, that the carrier remains responsible for the contractor's compliance, and that carriers cannot defend against DOT enforcement actions by saying that their noncompliance was the contractor's fault.

Paragraph (c) continues language concerning carriers' contracts or agreements of appointment with travel agents. As drafted, this language would apply only to U.S. carriers with respect to U.S. travel agents. The reason for not proposing to cover foreign airlines or foreign travel agents under this provision is that rules concerning relationships between U.S. carriers and foreign travel agents, or foreign carriers and their travel agents, could prove very difficult to monitor and enforce. The Department seeks comment on this aspect of the section. In addition, the Department also seeks comment on whether there should be additional or specific requirements added to this section concerning on-line travel agencies (*e.g.*, web sites that provide schedule and fare information and ticketing services for many air carriers).

Section 382.17 May Carriers Limit the Number of Passengers With a Disability on a Flight?

This language carries forward, without substantive change, the prohibition on number limits that is found in current § 382.31(c). We have added a cross reference to proposed § 382.27(a)(7), which incorporates the provision of current § 382.33(a)(7) allowing carriers to require advance notice in situations where 10 or more passengers with a disability make reservations to travel as a group.

Section 382.19 May Carriers Refuse To Provide Transportation on the Basis of Disability?

For the most part, this section carries forward the prohibition of refusal to provide transportation found in current § 382.31, without substantive change. However, the proposed language would clarify the basis on which an air carrier may deny transportation to a passenger. In addition to updating the citations to statutory and regulatory provisions that provide a basis for excluding passengers from a flight and including a reference to TSA as well as FAA regulations, the NPRM uses the concept of ''direct threat'' as the standard for when a carrier may conclude that there is a safety basis for excluding a passenger from a flight. The use of this concept is consistent with current law and practice under section 504 of the Rehabilitation Act of 1973 and the ADA, and it includes the point that if mitigating measures short of exclusion are available to deal with the direct threat to safety of others, then exclusion is not appropriate. In a situation where a foreign carrier believed that foreign law (including a foreign air safety regulation) precluded it from complying with this provision (*i.e.*, directed the carrier to exclude a passenger with a given disability that this section requires the carrier to transport), the foreign carrier could seek a waiver under § 382.7.

As under the current Part 382, this section is not intended to preclude pilots-in-command from exercising their authority over the operation of a flight. However, if the action of a pilot-in-command is inconsistent with these rules, the airline may be subject to subsequent enforcement action by the Department.

We have added clarifying language that relates refusals to provide transportation to the passenger's ''originally scheduled flight.'' The purpose of this language is to make sure that everyone understands that if a carrier improperly refuses to allow a passenger to fly as originally scheduled on the basis of disability, the action is still a ''refusal'' even if the carrier places the individual on a subsequent flight. Of course, the prohibition of refusals applies to subsequent flights as well (*e.g.*, when the originally scheduled flight is cancelled for weather or mechanical reasons, the passenger is rebooked, and the carrier then refuses to carry the passenger on the rebooked flight).

Section 382.21 May Carriers Limit Access to Transportation on the Basis That a Passenger Has a Communicable Disease or Other Medical Condition?

Section 382.23 May Carriers Require a Passenger With a Disability To Provide a Medical Certificate?

These provisions carry forward the substance of current §§ 382.51–382.53, which prohibit carriers from requiring a passenger with a disability to provide a medical certificate or a doctor's note except as specifically permitted by this rule. The placement and wording have been changed for greater clarity. In Appendix A, the Department's guidance states that carriers may ask for documentation with respect to emotional support animals. We seek comment on whether it would be helpful to refer to this documentation in § 382.23.

Section 382.25 May a Carrier Require a Passenger With a Disability To Provide Advance Notice That He or She Is Traveling on a Flight?

Section 382.27 May a Carrier Require a Passenger With a Disability To Provide Advance Notice in Order To Obtain Certain Specific Services in Connection With a Flight?

These sections carry forward the substance of current § 382.33. Proposed § 382.25 is separated from the rest of the text to emphasize the basic principle that no passenger with a disability is required to provide advance notice of the fact that he or she is a passenger with a disability traveling on a flight. The only situations in which carriers are authorized (never required) to insist that passengers provide advance notice is when the passengers want certain services or accommodations specified in this section. When a carrier is permitted to insist on advance notice, the advance notice cannot exceed 48 hours. The carrier may also require the passenger to check in an hour before the scheduled departure time for the flight.

There are some services an air carrier is not required to provide at all, but if an air carrier does provide them, the carrier may require advance notice. The most notable of these is medical oxygen for use of passengers. The Department has been aware, for many years, of the extensive difficulties faced by passengers who use oxygen. The problem results from DOT hazardous materials safety regulations that prohibit passengers from bringing their own personal oxygen supplies into the cabin and that provide that only oxygen supplied by carriers may be used on aircraft. Not all carriers provide medical oxygen, and those that do often charge high prices. This can make travel for persons who use oxygen very costly, in some cases prohibitively so.

This NPRM does not propose provisions to address this problem. However, over the last two years, the Department has been actively working on solutions to this problem with parties including the airline industry, medical organizations, disability groups, and oxygen equipment manufacturers and oxygen suppliers, to examine whether state-of-the-art technology for oxygen delivery systems could be accommodated within the existing regulatory structure. Because these efforts have not yet resolved difficulties encountered in air travel by users of medical oxygen, the Department has begun work to develop proposals to make travel for oxygen users much easier in the future. These proposals

would be reflected in future DOT rulemaking or other initiatives.

Section 382.29 May a Carrier Require a Passenger With a Disability To Travel With a Safety Assistant?

This section uses the term ''safety assistant'' rather than the current term ''attendant'' because the new term more accurately describes the role of such an individual. The section is otherwise substantively the same as current § 382.35.

A safety assistant is someone who accompanies a passenger with a disability in order to provide assistance in the event of an emergency, such as an evacuation of the aircraft. This term should help everyone keep in mind the distinction between the quite different roles of the safety assistant and a personal care attendant (PCA) or other person accompanying a passenger with a disability. Under this proposed section, as well as current § 382.35, it is never appropriate for an air carrier to insist that a passenger with a disability travel with a PCA or other person to help the passenger with personal functions or activities.

Section 382.31 May Carriers Impose Special Charges on Passengers With a Disability for Providing Services and Accommodations Required by This Rule?

This section is based on current § 382.57. It makes two clarifications. First, if a carrier provides a service that is not required by this rule, the carrier may charge for it (*e.g.,* oxygen). Second, if a passenger actually occupies more than one seat, the carrier can charge for the number of seats he or she occupies. For example, a person who is large enough that he or she needs two seats can be charged for two seats, even if the individual has a disability. This would not be considered a prohibited special charge under the rule. This provision carries forward the Department's long-standing requirement of § 382.38(i).

Section 382.33 May Carriers Impose Other Restrictions on Passengers With a Disability That They Do Not Impose on Other Passengers?

This section is based in part on current § 382.55(b) and (c) and on long-standing interpretations of the Department's rule. This section stresses that the enumerated practices that are prohibited are not an exhaustive list. As a general matter, except where otherwise authorized by Part 382 or required by an FAA or TSA rule, carriers may never impose restrictions or requirements on passengers with disabilities that they do not impose on similarly situated passengers who do not have disabilities. We are proposing adding one specific prohibition to the list, namely the practice of requiring ambulatory blind passengers or other persons who can walk to use a wheelchair in order to be provided assistance. This practice is unnecessary and offensive to many passengers. As noted above, if a foreign carrier believes it is required by foreign law to impose restrictions on passengers with disabilities that Part 382 does not permit, the carrier may apply for a waiver under § 382.7

Section 382.35 May Carriers Require Passengers With a Disability To Sign Waivers or Releases?

This section concerns a specific type of restriction or requirement that carriers are not allowed to impose on passengers with disabilities. Carriers would be prohibited under this section from making passengers with a disability sign a waiver of liability or release as a condition of being allowed to travel or to receive required accommodations for a disability. This prohibition specifically includes waivers or releases pertaining to the loss of or damage to wheelchairs and other assistive devices. This latter requirement is currently found in § 382.43(c). Carriers could, if they wish, make notes of pre-existing damage to wheelchairs and other assistive devices.

Subpart C—Information for Passengers

Section 382.41 What Flight-Related Information Must Carriers Provide to Qualified Individuals With a Disability?

This provision is based on current § 382.45(a), and adds a few clarifications. Information about seat locations must be made available by specific row and seat number, and any limitations on storage capacity must include information concerning storage of a passenger's assistive devices.

Section 382.43 Must Information and Reservation Services of Carriers be Accessible to Individuals With Hearing and Vision Impairments?

The portion of this section concerning telephonic communications with persons who are deaf or hard-of-hearing is derived from current § 382.47(a), and it provides that a carrier who makes telephone information or reservation service available to the public must make that service available to deaf or hard-of-hearing persons through use of a TTY. U.S. carriers are already required to meet this requirement under the current rule. Foreign carriers would have a year from the effective date of the final rule to ensure that their phone information and reservation services were accessible to deaf and hard-of-hearing persons. The Department seeks comment on whether there are countries the communications infrastructures of which do not readily permit the use of TTYs, such that another means of making information and reservations available to these persons would be necessary. If so, what alternative means should be authorized, and under what circumstances?

There are other issues concerning provision of services to deaf and hard-of-hearing individuals that this NPRM does not address, such as requirements for visual information displays or assistive listening devices in airport terminals or on aircraft, and the captioning of movies and other entertainment videos on aircraft. The Department has held a public meeting on this subject, and we are working through a memorandum of understanding (MOU) with the National Council on Disability (NCD) to develop recommendations in this area. The Department anticipates that, after receiving recommendations through this process, we will be in a position to undertake further rulemaking on this subject.

Proposed paragraph (b) is new, and concerns the accessibility of web sites, which have become an increasingly important means through which the public obtains information from and makes reservations with air carriers. Not only is using an airline web site often the fastest and most convenient way for consumers to learn about and book flights, but these web sites are also often the only places where passengers have access to certain fares or specials. At the time the Department originally issued Part 382, the internet was not yet an important means of interaction between airlines and their customers. It is important to update this rule to take this important change into account, and to ensure that passengers with vision impairments have nondiscriminatory access to airline web sites.

Consequently, the Department proposes that airlines must make their web sites accessible to all members of the public, including those who are blind or visually impaired. We propose that standards for accessibility be those in 36 CFR Part 1194, which implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 applies to activities of the Federal government, and does not on its own terms cover airlines. However, we believe that the standards developed under section 508 are generally the appropriate standards for web site accessibility. Use of these

standards would result in compliance with an airline's obligations under the ACAA to make its services accessible to passengers with disabilities. The Department seeks comment on whether these standards should be modified in any way in the airline web site context and on whether there are any other standards—domestic or foreign—that would also be appropriate. In this context, we note that the Access Board considered and rejected use of private sector web accessibility standards such as those developed by the World Wide Web Consortium Web Accessibility Initiative, believing that such standards were sometimes too subjective and would be difficult to enforce.

In *Access Now* v. *Southwest Airlines* (227 F.Supp.2d; S.D. Fl., 2002) , the District Court concluded that an airline was not required to make its web site accessible on the authority of Title III of the ADA. (The 11th Circuit Court of Appeals dismissed an appeal on procedural grounds.) The court's decision was based on its view that Title III requires accessibility modifications of *physical* places of public accommodation and that a web site is not such a place. However, the ACAA contains no such limitation. The ACAA requires that all airline services to the public be accessible to persons with disabilities and provided in a nondiscriminatory manner. This applies whether the service is provided in person, over the phone, or on the internet.

New web sites going on-line after the effective date of this rule would have to be accessible from the outset. Existing web sites would have two years to comply. It should be pointed out that under this proposal, web sites that act as affiliates, agents, or contractors for a number of carriers (*e.g.,* Orbitz, Expedia, Travelocity) would be required to be accessible, no less than web sites serving only a single carrier.

If a carrier provides written information to the public (*i.e.,* in hard copy), this section would require that the information must be communicated effectively to persons with disabilities, upon request, including people who are blind or have vision impairments. This effective communication requirement could be met in a variety of ways. The Department notes that, in the Department of Justice Title III ADA regulation for places of public accommodation, the auxiliary aids that could be provided to communicate effectively with persons with impaired vision include qualified readers, taped texts, audio recordings, brailled materials, large print materials, and other effective methods of making visually delivered materials available to individuals with visual impairments (see 28 CFR § 36.303(b)(2)). No one particular method of providing effective communication would be required in all instances. In addition, information would have to be made available in the languages in which the same information is made available to the general public. The Department seeks comment on whether there should be greater specificity in this requirement and suggestions for how, if at all, the rule should define the scope of this obligation.

One of the services that carrier web sites may provide is the ability to select seat assignments or various special services (*e.g.*, special meals). Where web sites provide services of this kind, it would seem reasonable that the web sites should also allow passengers to request accommodations for disabilities (*e.g.*, assistance in connecting to another flight or services for which carriers are permitted to require advance notice under this rule). The Department seeks comment on whether the final rule should include a requirement that carrier web sites that allow passengers to request special services should also permit passengers to request accommodations for disabilities. Such a capability would have to be accessible to visually-impaired persons and other users with disabilities.

U.S. carriers would have to meet all the requirements of this section with respect to all their systems and activities. Consistent with the coverage of foreign carriers outlined in § 382.5, foreign carriers' obligations could be somewhat more limited. They would have to comply only with respect to flights and related activities covered under § 382.5. For example, only portions of a web site pertaining to flights beginning or ending at a U.S. airport would have to meet the internet accessibility requirement of proposed paragraph (b). It would be up to the foreign carrier to decide whether it made sense to segregate its U.S.-related operations from its other operations in this way.

Section 382.45 Must Carriers Make Copies of This Rule Available to Passengers?

This section, based on current § 382.45(d), clarifies that the carrier must have a current, up-to-date, copy of Part 382 available for review not only by individuals with disabilities but by any member of the public who requests it. It must be available at each airport the carrier serves. In the case of a foreign carrier, this means it must be available at any airport serving flights that begin or end at a U.S. airport. It would be sufficient if the carrier has one copy that passengers can review. It is not necessary for them to have multiple copies to hand out. The effective communication requirement of § 382.43 would apply to the provision of the rule to a requesting passenger, except that translations of the rule into foreign languages would not be required. As noted in the discussion of § 382.43 above, this effective communication requirement could be met in a variety of ways, including but not limited to the provision of materials in alternative formats (*e.g.*, in some circumstances it could include reading information to passengers who asked for it). The Department seeks comment on whether there should be greater specificity in this requirement and suggestions for how, if at all, the rule should define the scope of this obligation.

Subpart D—Accessibility of Airport Facilities

Section 382.51 What Requirements Must Carriers Meet Concerning the Accessibility of Airport Facilities?

Paragraph (a) concerns accessibility requirements for terminal facilities at U.S. airports. It applies equally to foreign or U.S. carriers with respect to the terminal facilities they own, lease, or control at a U.S. airport. The substantive requirements of the proposed paragraph are based on current § 382.23, with some additional elaboration (*e.g.*, that an accessible path is one meeting accessible path guidelines in the Americans with Disabilities Act Accessibility Guidelines).

Paragraph (b) states requirements pertaining to foreign airports. It would apply to both U.S. and foreign carriers for facilities they lease, own, or operate at foreign airports. Consistent with the proposed requirements for foreign carriers generally, this requirement applies to foreign carriers only with respect to terminal facilities serving flights that begin or end at a U.S. airport. It is obvious that, for air travel to points outside the U.S. to be accessible to passengers with disabilities, accessible airport facilities are essential at both the U.S. and foreign airports involved in a flight. If a carrier's airport facilities at the U.S. end of a flight are accessible, but the carrier's facilities at the foreign end of the flight are inaccessible, a passenger with a disability will be unable to complete the journey. Such a denial of access to the air travel system is incompatible with the purposes of the ACAA. The Department is aware that there may be

situations at some foreign airports in which a U.S. or foreign carrier does not own, lease, or control facilities that are important to passenger accessibility. We seek comment on how, if at all, the rule should address such situations.

For both U.S. and foreign carriers, the NPRM proposes a performance requirement, rather than a facilities accessibility requirement, as such: passengers must be able to move through the airport readily and get to and from the gate they will be using. Carriers meet this obligation through any combination of facility accessibility, auxiliary aids, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability. The Department proposes to adopt this performance standard, rather than requiring compliance with the ADAAGs or other U.S. accessibility standards, because it is questionable whether it would be legally and practically sound to impose these standards on facilities located on foreign soil. The Department does not consider physically hand-carrying a passenger (*i.e.*, picking the person up bodily in the arms of carrier personnel to move them through the terminal) to be consistent with passengers' safety and dignity. This practice would be prohibited under proposed § 382.101, as it is prohibited now under current § 382.39(a)(2).

Paragraph (c) establishes compliance dates for the requirements of this section. Foreign carriers would have a year to comply, both at U.S. and foreign airports. U.S. carriers are already required to comply with these requirements at U.S. airports, and would have a year to comply at foreign airports. The Department seeks comment on whether this time frame is feasible.

One feature now found at airports that was not present when the original ACAA rule was issued in 1990 is the electronic ticketing kiosk. Particularly for passengers who are traveling without checked luggage, these kiosks can save considerable time by avoiding the need to wait in long lines at the ticket counter. The Department seeks comment on the accessibility of these devices. In terms of approachability, height of screens and controls, location of slots for credit cards and dispensing of boarding passes, are kiosks sufficiently accessible to passengers with mobility impairments? Is use of the devices accessible to persons with mobility or vision impairments? Should the final ACAA rule contain specific accessibility requirements for them and, if so, what should the requirements be? In this context, we note 36 CFR 1194.25, part of the Access Board's section 508 standards for ''self-contained closed products.'' This provision requires independent access for persons with hearing or vision impairments and that machines be within specified reach ranges. The Department seeks comment on whether the final rule should adopt these standards by reference for electronic kiosks.

Section 382.53 What Accommodations Are Required in Airports for Individuals With a Vision Impairment and Individuals Who Are Deaf or Hard-of-Hearing?

This provision is derived from current § 382.45(c), as it pertains to airport facilities. Foreign carriers would have a year to comply, both at U.S. and foreign airports. U.S. carriers are already required to comply with these requirements at U.S. airports, and would have a year to comply at foreign airports. Again, the Department seeks comment on whether this time frame is feasible. As mentioned above, the Department is working on a follow-on NPRM specifically concerning accommodations for deaf and hard-of-hearing passengers. The future NPRM will consider such accommodations in greater detail. Meanwhile, the current NPRM proposes to retain the existing requirements for such accommodations and would apply them to foreign air carriers.

Section 382.55 What Requirements Apply to Carriers' Security Screening Procedures?

At the time of the publication of the original ACAA rule, security screening procedures were controlled by air carriers and consequently subject to regulation under Part 382. However, the Transportation Security Administration now controls security screening at U.S. airports. As a Federal agency, it is not subject to regulation under the ACAA. Likewise, there may be foreign legal requirements for security screening at foreign airports that are not subject to ACAA regulation.

Proposed § 382.55 recognizes the role of these authorities. However, it is possible that some air carriers may choose to conduct security screening procedures that go beyond those carried out under TSA or foreign legal requirements. The Department wants to ensure that additional air carrier security screening procedures do not discriminate against passengers with a disability. Consequently, for such additional carrier-imposed procedures, we propose to carry forward the substance of current § 382.49. The Department seeks comment on whether this is necessary and, if so, whether the provisions should be modified to reflect the kind of additional security screening procedures that carriers impose. For example, if a carrier interviews passengers as part of its security screening process, how should it ensure effective communication in the interview with a passenger having a hearing or vision impairment?

Subpart E—Accessibility of Aircraft

Section 382.61 What Are the Requirements for Movable Aisle Armrests?

This section is based on current § 382.21(a)(1). It would make a number of clarifications to the existing language. The basic requirement of movable aisle armrests on half the aisle seats on the aircraft remains the same. The rule would specify that the base number of passenger aisle seats from which the 50 percent requirement is calculated would not include seats in exit rows or any other place where an FAA safety rule precludes a passenger with a mobility impairment from sitting.

Paragraph (c) would state explicitly that movable aisle armrests must be provided proportionately in all classes of service in the entire passenger cabin. For example, if 80 percent of the aisle seats on the aircraft in which passengers with mobility impairments may sit are in coach, and 20 percent are in first class, then 80 percent of the movable aisle armrests must be in coach, with 20 percent in first class. The proposed rule would provide a phase-in period for U.S. as well as foreign air carriers, to prevent undue hardship in cases where carriers had not previously installed movable armrests in all classes of service.

Paragraph (d) carries forward an existing requirement from § 382.21(a)(1)(iii). We would note that, consistent with § 382.41, this information must be provided specifically by seat and row number.

The current rule includes an exception for types of seats in which incorporating movable aisle armrests would not be feasible. The Department is proposing to delete this exception. The Department has not seen evidence showing that any particular sort of seat truly makes the use of movable aisle armrests infeasible. Moreover, the Department believes that this exception has led to a lack of movable armrests in some classes of service for some carriers. The Department seeks comment on this issue.

U.S. carriers are already subject to most of the requirements of this section. We propose to require foreign carriers to

comply on the effective date of the final rule with respect to new aircraft they order after that date, or which are delivered to them beginning two years after the effective date. (Only aircraft that would be used in service to U.S. airports would be subject to this requirement.) This gives foreign carriers the same phase-in time that the Department made available to U.S. carriers when we issued the original ACAA rule.

Section 382.63 What Are the Requirements for Accessible Lavatories?

This section carries forward the requirements of current § 382.21(a)(3). It would make explicit that carriers may, but are not required to, install accessible lavatories in single-aisle aircraft. It also points out that while retrofit is not required, if a lavatory unit is replaced on an existing aircraft with more than one aisle, it must be replaced with an accessible unit. The same would hold true for the replacement of a lavatory component, even if the entire unit is not replaced. As with movable aisle armrests, foreign carriers must comply with the requirement for new aircraft ordered after the effective date of the final rule or delivered beginning two years after that date. U.S. carriers are already required to comply with respect to all aircraft ordered or delivered after the dates specified in the original Part 382.

The Department is aware that the absence of accessible lavatories on single-aisle aircraft can create inconvenience and difficulty for some passengers with disabilities. The Department has refrained from proposing to require accessible lavatories in single-aisle aircraft primarily out of concern that the cost of installing these lavatories could impose an undue financial burden on air carriers. This potential burden relates not only to the cost of the lavatory units themselves but also, and more importantly, to the continuing revenue losses that airlines would encounter because they would probably have to reduce the seating capacity of the aircraft to accommodate the larger lavatory unit. Nevertheless, we ask for comment on whether it would be desirable and feasible, practically and economically, to require accessible lavatories on at least some new single-aisle aircraft (*e.g.*, those above a certain seating capacity). Of course, as in other areas of this regulation, the Department would not contemplate requiring retrofit of existing aircraft.

For some years, the Department has had available guidance on the design of accessible lavatories both for use in single-aisle and double-aisle aircraft. This guidance is posted on the Department's Web site (*http://ostpxweb.dot.gov*).

Section 382.65 What Are the Requirements Concerning On-Board Wheelchairs?

This section carries forward the requirements of current § 382.21(a)(4), which requires carriers to have a full-time on-board wheelchair in the cabin of some aircraft, and to provide an on-board wheelchair on *any* flight using an aircraft with more than 60 seats on the advance request of a passenger. It would propose one substantive change, applying on-board wheelchair requirements to aircraft with 50 or more seats, rather than more than 60 seats as is the case under the current rule. This change is proposed in light of the growing prominence in airline fleets of regional jets, which often have a seating capacity of 50 passengers.

U.S. carriers are already required to comply with this requirement with respect to aircraft with more than 60 seats. We would provide a year phase-in period with respect to aircraft having 50–60 seats. We would also give foreign carriers two years from the effective date of the rule to come into compliance.

Section 382.67 What Is the Requirement for Priority Space in the Cabin To Store Passenger Wheelchairs?

This section carries forward the requirements of current § 382.21(a)(2), which requires newer aircraft with 100 or more seats to have priority space in the cabin for stowage of at least one passenger's folding wheelchair. This refers to a different wheelchair and a different space than the carrier-supplied on-board wheelchair and space described in current § 382.21(a)(4) and proposed § 382.65 above. In some situations, a carrier must accommodate *both* a passenger's folding wheelchair (to minimize the chance of damage and to make return of the chair to the passenger quicker and more convenient) *and* a carrier-supplied on-board wheelchair (to allow a passenger with a mobility impairment to get to the lavatory during the flight). U.S. carriers are already required to comply; we would give foreign carriers two years from the effective date of the rule to come into compliance.

The Department has always intended, and the rule has always meant, that the storage space for the passenger's wheelchair must be sufficient for a typical adult-size folding wheelchair that belongs to a passenger. Recently, however, some carriers appear to have misunderstood the current rule, suggesting that the rule could be interpreted to mean that a carrier could comply by providing space only for a child-size wheelchair, the carrier's own on-board wheelchair, or a multi-piece break-down wheelchair, the components of which could be stored in the overhead compartments and under-seat spaces normally used for carry-on luggage. We have revised the regulatory text to make sure that such misunderstandings will not arise in the future. We seek comment on whether any additional language is needed. We also propose specific dimensions for a passenger wheelchair that would fit into the designated space. These dimensions have been used in DOT enforcement actions. We seek comment on whether the dimensions provide sufficient space for typical passenger folding wheelchairs and are otherwise appropriate.

Current DOT enforcement policy permits carriers to comply with the requirements for passenger wheelchair stowage space across two or three seats using a strap kit approved by the FAA, rather than to retrofit an aircraft, possibly involving the removal of seats, to provide the designated wheelchair space. If it is necessary to bump passengers to accommodate a passenger wheelchair carried in this fashion, the bumped passengers receive compensation equivalent to denied boarding compensation. This approach is not mentioned in the current or proposed rule text. We seek comment on whether the rule text should codify this policy or whether the rule should require a closet in each aircraft (or, at least, each new aircraft) that is capable of accommodating a passenger's folding wheelchair.

If a carrier wishes to use this or another alternative means to meet the passenger wheelchair stowage requirement, it should request approval from the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th Street, SW., Washington DC 20590. Approval would be contingent on FAA concurrence, where applicable. The Department proposes to continue to make this compliance option available under the proposed rule.

Section 382.71 What Other Aircraft Accessibility Requirements Apply to Carriers?

This section carries forward administrative requirements now found in § 382.21(d)–(f).

Subpart F—Seating Accommodations

Section 382.81 For Which Passengers Must Carriers Make Seating Accommodations?

Section 382.83 Through What Mechanisms do Carriers Make Seating Accommodations?

Section 382.85 What Seating Accommodations Must Carriers Make to Passengers in Circumstances not Covered by § 382.81 (a) Through (d)?

These sections carry forward the requirements of current § 382.38, restructured for greater clarity. The existing language that § 382.81(d) incorporates provides that the seating accommodation for a person with a fused or immobilized leg would be ''on the side of an aisle that better accommodates the individual's disability.'' The Department seeks comment on whether there have been any problems under this provision concerning passengers extending a leg into the aisle and interfering with service carts or pedestrians using the aisle. If there have been such problems, we seek comment on how to avoid them while still accommodating passengers in this situation. In addition, we note that by an ''immobilized'' leg, we mean one in which there is a severely limited range of motion in the knee, such that the passenger cannot flex the joint readily to any significant degree. We also seek comment on whether other seating accommodations should be added to fill gaps, if any, in the existing provision.

Section 382.87 What Other Requirements Pertain to Seating for Passengers With a Disability?

This provision carries forward the provisions of current § 382.37(a) and (b). Current § 382.37(c), concerning seating for persons traveling with a service animal, has been moved to the service animal section of the rule (proposed § 382.117(c)).

Proposed § 382.87(c) concerns one of the grounds for excluding a passenger from a flight. If the passenger's involuntary active behavior would create a direct threat in one seat location, but the passenger could be transported if seated safely in another location (*e.g.,* somewhere away from other passengers on a flight that was not full), then the carrier would have the obligation to offer a seat change to the passenger as an alternative to being refused transportation.

Paragraphs (d)–(f) codify existing interpretations and the requirements of current § 382.38 (h) and (i). With one exception, passengers with a disability are not required to give up a seating accommodation they already have to accommodate another passenger with a disability, and no one is ever denied transportation on a flight to provide accommodations required by this subpart (except in the ''strapping'' policy situation discussed in connection with § 382.67). Carriers are not required to furnish more than one seat per ticket (see discussion of § 382.31 above) and carriers would not be required to provide a seat in a class of service other than the one the passenger has purchased in order to provide an accommodation required by this part. The Department seeks comment on whether there should be any exceptions to this principle (*e.g.,* when a documented medical condition would preclude a passenger traveling in the space available to passengers in coach, but the additional room in business or first class would permit the individual to travel). If any such exceptions were permitted, what safeguard should be included to prevent abuse or undue burdens to the carrier or other passengers?

Paragraph (a) of this section prohibits carriers from excluding a passenger with a disability from a seat, except to comply with FAA regulations. If a foreign carrier believes that a foreign legal requirement precludes it from complying with this section, the carrier could apply for a waiver under § 382.7.

Section 382.89 When Do the Requirements of This Subpart Begin Applying to Carriers?

These requirements already apply to U.S. carriers. The proposal would give foreign carriers six months to come into compliance. We suggest six months, rather than a longer period, since compliance does not require physical alterations to aircraft or other facilities.

Subpart G—Boarding, Deplaning, and Connecting Assistance

Section 382.91 What Assistance Must Carriers Provide to Passengers With a Disability in Moving Within the Terminal?

This provision would require carriers to provide assistance to passengers with disabilities in moving around the terminal. It includes assistance with connections between flights; as under the current rule, the carrier that operates the arriving flight is responsible for the assistance, even if the connecting flight is with another carrier, and even if the passenger is traveling on two separate tickets and with separate reservations.

The proposed rule would also propose requirements concerning assistance in moving through the terminal other than in connecting flight situations. The carrier on whose flight the passenger is departing (at the beginning of a journey) or arriving (at the end of a journey) would be responsible for assisting the passenger between terminal entrance and gate, as well as with accessing ticket and baggage locations, rest rooms, or food service concessions. As in all aspects of carrier assistance to passengers, carrier personnel or their contractors are not expected to provide personal care attendant services, such as assistance with eating or using a bathroom. The Department seeks comment on whether, in the situation where a passenger is arriving at an airport to begin a journey, it is reasonable for the carrier to be able to require advance notice for meeting the passenger to provide the assistance required in this section.

Paragraph (c) proposes a new requirement, related to the requirement to assist passengers in moving through the terminal. It would obligate carrier and contractor personnel to assist passengers with disabilities with carry-on and gate-checked luggage as they go between connecting flights or between terminal entrance and gate. We believe that this obligation is implicit in the responsibility to assist passengers with disabilities in moving through terminals, but we believe it is useful to state the obligation explicitly to avoid any misunderstanding. We also seek comment on whether it would be reasonable to place limits on this obligation (*e.g.,* should the requirement apply to individuals other than those with mobility impairments?).

Section 382.93 Must Carriers Offer Preboarding to Passengers With a Disability?

When the Department published the original ACAA rules in 1990, it was an almost invariable carrier practice to offer preboarding to passengers with disabilities, as well as to families with small children and other persons needing a little more time to get settled into their seats. Some provisions of the rule (*e.g.,* concerning stowage of wheelchairs in the cabin) were explicitly premised on the availability of this service. It also stood to reason that this practice would accommodate the many situations in which passengers with disabilities needed more time or assistance than other passengers to complete seating (*e.g.,* a passenger who had to stow crutches or a cane, a blind passenger who needed assistance in finding a seat, a passenger who needed assistance from carrier personnel to

stow a carry-on bag in the overhead compartment).

In recent years, however, some carriers, at least for some flights, have abandoned or partially abandoned the practice of offering preboarding. The ACAA does not concern itself with families with small children or other situations in which non-disabled passengers might need additional time for seating. However, the Department believes that providing a preboarding option for passengers is an essential accommodation for seating, stowage, and other activities that are more difficult for passengers with disabilities than other people. For this reason, the Department is proposing to require a preboarding opportunity for passengers with disabilities of which all passengers would be notified.

Section 382.95 What Are Carriers' General Obligations With Respect to Boarding, Deplaning, and Connecting Assistance?

Paragraph (a) of this section carries forward the requirement of current § 382.39(a) and (a)(1). It specifies that the requirement for assistance, consistent with proposed § 382.91, includes responsibility for connecting flights. This paragraph speaks of carriers providing this assistance ''promptly.'' The Department seeks comment on whether this requirement should be more specific (*e.g.,* by including a time frame, like 10 or 15 minutes or by requiring that carriers ensure that deplaning assistance is provided to passengers with disabilities who will use an aisle chair for deplaning no later than the time that the aircraft aisle is clear of other passengers, such that the aisle chair can be brought to the passenger's aircraft seat). Our objective is to address situations in which passengers who need assistance in deplaning have been left on board aircraft for an unreasonable length of time.

Paragraph (b) rewords the requirement of current § 382.39(a)(2) to be consistent with the present state of requirements for providing boarding assistance at U.S. airports.

Section 382.97 To Which Aircraft Does the Requirement To Provide Boarding and Deplaning Assistance Through the Use of Lifts Apply?

Section 382.99 What Agreements Must Carriers Have With the Airports They Serve?

These sections combine and condense the requirements of current §§ 382.40 and 382.40a on the use of mechanical lifts or ramps, without making substantive changes in the requirements. By this time, compliance dates for all requirements to have agreements and lifts in place under current §§ 382.40 and 382.40a have passed for U.S. carriers and U.S. airports. The NPRM proposes time frames for foreign carrier compliance approximately similar to that which U.S. carriers had. The training-related provisions of the current regulations on boarding via lifts or ramps have been moved to proposed § 382.141(a)(1).

One of the most important changes in airline service since the publication of the original ACAA regulation concerns the increasing use of regional jets (RJs) by carriers for relatively short flights. These aircraft typically carry from 40–70 passengers and often are boarded from the tarmac, rather than via loading bridges. At many airport terminals, passengers must descend a level from the gate area to the tarmac in order to board. Under these circumstances, for passengers with mobility impairments to board these aircraft successfully, airlines and airports need to ensure that lifts are in place and made available to passengers and that there is an accessible path from the gate area to the tarmac. The Department's Aviation Consumer Protection Division has received few complaints about tarmac boardings of RJs. Nevertheless, the Department seeks information from airports, airlines, and passengers about whether these conditions are being met. Are there accessible paths from gate areas to the tarmac, and is lift service successful? We also seek comment on whether there are any additional regulatory provisions that would facilitate use of RJs by passengers with disabilities.

Section 382.101 What Other Boarding and Deplaning Assistance Must Carriers Provide?

This provision lists the circumstances in which use of lifts for boarding and deplaning is not required, even in the absence of other means of level-entry boarding. These include foreign airports, a specified category of smaller U.S. airports, situations involving exempt aircraft, situations prior to the compliance deadline for foreign carriers, and other situations beyond the control of the carrier that prevent use of the lifts. In all these situations, the obligation to provide boarding and deplaning assistance continues. Carriers must find other means of accomplishing the objective. No one method is prescribed; only physically hand-carrying a passenger, as described in § 382.101, is prohibited.

Section 382.103 May a Carrier Leave a Passenger Unattended in a Wheelchair or Other Device?

This section carries forward the requirement of current § 382.39(a)(3).

Subpart H—Services on Aircraft

Section 382.111 What Services Must Carriers Provide to Passengers with a Disability on Board the Aircraft?

This section carries forward the provisions of current § 382.39(b), and adds an ''effective communication'' requirement similar to the on-aircraft portions of present § 382.45(c), with some current exceptions eliminated. The effective communication would have to be with respect to such information as weather at the destination, connecting gates at the arrival airport, and on-board services.

Section 382.113 What Services Are Carriers Not Required To Provide to Passengers With a Disability on Board the Aircraft?

This section carries forward the provisions of current § 382.39 (c).

Section 382.115 What Requirements Apply to On-Board Safety Briefings?

This section carries forward the provisions of current §§ 382.45(b) and 382.47(b). Foreign carriers may comply with the requirement for video safety briefing materials incrementally, as they replace old videos with new ones. As is currently the case, carriers are prohibited from taking any action adverse to a passenger on the basis that the passenger has not ''accepted'' the briefing. For example, it would be improper for a carrier to take any action against a passenger because carrier personnel felt that the passenger was not paying sufficient attention to the briefing (*e.g.*, because he or she was reading at the time). While close attention to safety briefings is always recommended for passengers, carriers do not take action against members of the general passenger population who similarly ignore the general safety briefing. Passenger inattention to briefings does not prevent crewmembers from performing their duties under FAA safety rules, which is simply to provide the briefings. The Department seeks comment on whether any different requirements should apply to foreign carriers.

Section 382.117 Must Carriers Permit Passengers With a Disability To Travel With Service Animals?

This section carries forward the provisions of current § 382.55(a). While the substance of this provision has not

changed, new guidance concerning service animal issues found in Appendix A. The original source of this guidance was a series of questions and answers the Department published in 1996 (61 FR 56420). A group convened by the NCD and ATA subsequently provided recommendations via the NCD MOU with the Department. The Department made minor modifications and additions to the NCD/ATA suggestions, and we have previously posted this material on the Department's web site. This guidance replaces the questions and answers on service animal issues the Department published in 1996 (61 FR 56420). In Appendix A, the Department has made a few additional minor modifications to the sections on requesting and requiring documentation for service animals. The Department seeks comment on whether any modifications should be made to Appendix A.

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

Section 382.121 What Mobility Aids May Passengers With a Disability Bring Into the Aircraft Cabin?

This section incorporates the substance of current § 382.41(a)–(d). It adds a reference to TSA as well as FAA regulations that may affect the carriage of passengers' items in the cabin. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.123 What Are the Requirements Concerning Priority Cabin Stowage Space for Wheelchairs?

This section carries forward the substance of current § 382.41(e). It emphasizes the applicability of FAA, TSA, and hazardous materials rules to the carriage of items in the cabin. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

One problem that has sometimes occurred concerns competing claims to stowage space between passengers' wheelchairs and crew luggage. On some occasions, crew members have argued that their own luggage takes precedence over a passenger's folding wheelchair. A related problem has arisen in some cases where crew members have asserted that a passenger's folding wheelchair need not be stowed in the cabin because an on-board wheelchair is already stowed there. The language of this section is intended to address both problems. Under this provision, if a closet or other stowage space is made available for passengers' items at any time, then it must be made available for the stowage of passengers' wheelchairs. This use of the space is not trumped by crew luggage. Nor is the presence of an on-board wheelchair a valid reason for denying stowage space to a passenger's wheelchair. The Department's Aviation Enforcement and Proceedings Office has made these positions clear to carriers under the existing regulation, and we maintain these positions under the proposed rule.

Section 382.125 What Procedures Do Carriers Follow When Wheelchairs, Other Mobility Aids, and Other Assistive Devices Must Be Stowed in the Cargo Compartment?

This section carries forward the provisions of current § 382.41(f). It again makes reference to the potential applicability of TSA as well as FAA regulations. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.127 What Procedures Apply to Stowage of Battery-Powered Wheelchairs?

This section carries forward the provisions of current § 382.41(g). It again makes reference to the potential applicability of TSA as well as FAA regulations. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

Section 382.129 What Other Requirements Apply When Passengers' Wheelchairs, Other Mobility Aids, and Other Assistive Devices Must Be Disassembled for Stowage?

This section carries forward the provisions of current §§ 382.41(h) and 382.43 (a). It includes language incorporating an existing provision (see current § 382.41(h)) that carriers must permit a passenger to provide written directions concerning the disassembly and reassembly of wheelchairs and other devices. The carrier would have to follow these instructions to the greatest extent feasible, consistent with applicable FAA and TSA rules. As in other situations in which there could be a conflict with foreign law, foreign carriers could apply for a waiver under § 382.7.

The purpose of this requirement is to reduce the chance for damage to wheelchairs and other devices resulting from unfamiliarity by carrier personnel with the best way of working with the devices. The passenger is often the best source of information on how to handle his or her valuable property.

Section 382.131 Do Baggage Liability Limits Apply to Mobility Aids and Other Assistive Devices?

This section carries forward the provisions of current § 382.43(b). Because the rule now would apply to foreign carriers, the Department believes it is useful to spell out that the domestic baggage liability limits of 14 CFR part 254, as well as the exception to these limits that this section in effect creates, do not apply to international transportation to which Warsaw or Montreal Convention liability limits apply. The Department seeks comment on how liability for loss of or damage to wheelchairs and other assistive devices should be handled in the case of international transportation.

Subpart J—Training and Administrative Provisions

Section 382.141 What Training Are Carriers Required To Provide for Their Personnel?

This section is based principally on current § 382.61 (a)(1)–(3), (5)–(7), and (b). The NPRM would add provisions concerning training on equipment operation and consultation with disability community organizations. The Department seeks comment on the application of this proposed requirement to foreign carriers. For example, if a foreign carrier can demonstrate it made good faith efforts to contact disability community organizations in its home country, but was unable to do so, should the requirement be waived? In addition, training would cover contractor employees who deal with the traveling public generally, not only at airports as under the current § 382.61(a)(6). For example, contract reservationists who deal with customers over the phone need to know how to apply certain provisions of this regulation no less than ticket agents located at an airport.

Section 382.143 When Must Carriers Complete Training for Their Personnel?

This section would establish the schedule on which carriers must complete the training of their personnel. Training of contractor personnel would be required to follow the same schedule, as if the contractor personnel worked directly for the air carrier. Current personnel of U.S. carriers are supposed to have received ACAA training already. However, the final rule will probably change some requirements of the rule. Consequently, the Department proposes that existing U.S. carrier personnel

would be given training on the revised Part 382 within a year of the effective date of the final rule. The training could be limited to changes in the regulation. New U.S. carrier personnel would have to receive complete ACAA training before they started work, or within 60 days of doing so, depending on the position they occupy.

For foreign carriers, training requirements would be limited to carrier and contractor personnel who deal with the traveling public in connection with flights that begin or end at a U.S. airport. Because foreign carriers probably would not have experience in developing and implementing disability-related training programs comparable to that of U.S. carriers, foreign carriers would not be required to complete training for any of their personnel until a year from the effective date of the rule. Otherwise, the U.S. and foreign carrier training requirements would be parallel.

Section 382.145 What Must Carriers Incorporate in Their Manuals?

Current § 382.63 requires carriers to establish ACAA compliance programs, which major or national U.S. carriers must submit to DOT for review. The NPRM proposes to delete this requirement, which we believe is no longer necessary. Rather, this section would require all carriers to incorporate their procedures for complying with ACAA requirements in their manuals, training materials, and guidance for their personnel. Carriers would not be required to submit these materials to DOT as a routine matter. However, carriers would have to make them available to DOT for review on DOT's request. DOT could require a carrier to change these materials to comply with Part 382. We also seek comment on whether it would be beneficial for carriers to be required to submit certifications of compliance with this requirement to the Department.

Subpart K—Complaints and Enforcement Procedures

Section 382.151 What Are the Requirements for Providing Complaints Resolution Officials?

This section is based on current § 382.65 (a)(1)–(4). We propose an important addition to the current language. In any situation in which a person raises a disability-related issue, and a carrier's personnel do not resolve the issue immediately to the customer's satisfaction, the carrier's personnel must immediately inform the customer of the right to contact a Complaints Resolution Official (CRO). Frequently, passengers do not know that CROs exist and that they can be a resource to solve discrimination or accessibility problems. We believe it should be the airline's responsibility to make passengers aware of this resource when a passenger's disability-related concern has not been addressed to the customer's satisfaction by the carrier's staff. A web site, phone reservation system, or contractor must also provide this same information when such a problem arises. To ensure that passengers have the necessary tools at their disposal to resolve issues, the airlines in this situation would also have to provide the Department's toll-free airline accessibility hot line number. This number is available only for calls made from the U.S.

The current and proposed regulations require carriers to make CRO service available at all times when the carrier is operating at the airport. In some cases, a carrier may have only a few flights a week to a given airport. The carrier may staff its station at that airport only around the times that these flights are arriving or departing. In such a case, CRO service would only be required during those periods.

Section 382.153 What Actions Do CROs Take on Complaints?

This section is based on current § 382.65(a)(5). It concerns situations when a complaint is made directly to a CRO, typically by such ''real time'' means as a personal conversation, phone or TTY call, or electronic instant message. (Communications to the carrier's organization are discussed below in connection with § 382.155.)

Section 382.155 How Must Carriers Respond to Written Complaints?

This section is unchanged from the current § 382.65(b), except that it eliminates the 45-day complaint filing deadline with respect to complaints forwarded to carriers by DOT.

Section 382.157 What Are Carriers' Obligations for Recordkeeping and Reporting on Disability-Related Complaints?

The Department has issued a final rule creating a new § 382.70, concerning recordkeeping and reporting requirements to comply with AIR–21 mandates. We are not reprinting this material here, because we are not seeking additional comment on it. When the final rule based on this NPRM is issued, we will insert the contents of the current § 382.70 at this point in the revised rule. The Department will also incorporate the Appendix created by the recordkeeping and reporting requirements rulemaking into the Part 382 final rule as Appendix B.

Section 382.159 How Are Complaints Filed With DOT?

This section carries forward the provisions of current § 382.65(c).

Appendix A—Guidance Concerning Service Animals

This appendix incorporates into the ACAA rule the guidance on service animal issues that the Department recently issued and placed on its web site. The guidance is intended to give both air carriers and passengers the benefit of the thinking of the Department, the airline industry, and the disability community on how to carry out the rule's requirements for accommodating passengers' service animals. This proposed appendix would add three elements to the previously published version of the guidance: training for emotional support animals, a prohibition on requiring documentation for most service animals, and certain conditions on the use of service animals. As noted above, the Department is seeking comments on whether this guidance should be modified in any way.

One issue of which the Department has become aware concerns transportation of service animals on long-duration flights (*e.g.*, nonstop trans-Pacific flights that may take 14–18 hours). Eating, drinking, and elimination functions for service animals could prove problematic under these circumstances. The Department seeks comment on how best to address these issues. In addition, in the context of connecting flights for passengers using service animals, the Department has heard suggestions that airports provide animal relief areas in terminals. (If such a provision were included in the rule, it would presumably be in Subpart D.) We seek comment on whether providing animal relief areas in airport terminals is feasible and, if so, how it would best be accomplished.

Reference Table—Placement of Current Provisions

The purpose of this table is to aid readers in finding the location, in the new proposed rule text, of material corresponding to or derived from provisions in the current rule text. The current and proposed language often is not identical, though the subject matters covered are similar. The citations from the current regulatory text are in the left-hand column; the corresponding portions of the new proposed regulatory text are in the right-hand column.

Current rule text	New proposed rule text
382.1	382.1
382.3(a)–(d)	382.5
382.3(e)–(g)	382.9
382.5	382.3
382.7	382.11–382.13
382.9	382.15
382.21	382.61–382.71
382.31	382.19
382.33	382.25–382.27
382.35	382.29
382.37	382.87
382.38	382.81–382.85
382.39(a)	382.91(a)
382.39(a)(1)	382.95(a)
382.39(a)(2)	382.101
382.39(a)(3)	382.103
382.39(b)	382.111
382.39(c)	382.113
382.40(a), 382.40a(a)	382.95(b)
382.40(c)(4), 382.40a(c)(4).	382.97
382.40(c)(1)–(3), (5)–(6); 382.40a(c)(1)–(3), (5)–(6).	382.99
382.40(d), 382.40a(d)	382.141(a)(1)(ii)–(iii)
382.41(a)–(d)	382.121
382.41(e)	382.123
382.41(f)	382.125
382.41(g)	382.127
382.41(h)	382.129(a)
382.43(a)	382.129(b)
382.43(b)	382.131
382.43(c)	382.35
382.45(a)	382.41
382.45(b)	382.115(a)–(d)
382.45(c)	382.53
382.45(d)	382.45
382.47(a)	382.43(a)
382.43(b)	382.115(e)
382.49	382.55
382.51	382.21
382.53	382.23
382.55(a)	382.117
382.55(b)–(c)	382.33
382.61	382.141–382.143
382.63	382.145
382.65(a)(1)–(4)	382.151
382.65(a)(5)	382.153
382.65(b)	382.155
382.55(c)–(d)	382.159
382.70	382.157 (reserved in NPRM)

Regulatory Analyses and Notices

This proposed rule is a significant rule under Executive Order 12886 and the Department's Regulatory Policies and Procedures. It is of considerable interest to the disability community and the aviation industry. It does not, however, meet the criteria under the Executive Order for an economically significant rule.

The extension of current provisions to foreign air carriers will be of significant interest to them and the public. The Department has attempted to propose this extension in as even-handed a manner as possible, applying not only the same regulatory provisions but the same compliance time frames that applied to U.S. carriers. As noted above, the provisions of the proposed rule apply only to foreign aircraft and operations involved with flights beginning or ending at U.S. airports.

Other than extending coverage of ACAA provisions to foreign carriers, the most important new element is the requirement for web site accessibility, which is an extension of existing communications accessibility requirements to a medium that did not play an important role in the industry when the original ACAA rule was issued. This new requirement would apply to U.S. and foreign carriers alike (though, with respect to foreign carriers, only with respect to flights to and from U.S. airports).

This rule results from a statutory change applying the requirements of the ACAA to foreign as well as U.S. air carriers. We believe that amending Part 382 to cover foreign air carriers is the most direct and transparent way of carrying out this statutory mandate. There are alternative approaches the Department could consider, though the Department does not at this time believe they are as feasible. Nevertheless, the Department seeks comment on these and any other alternatives that commenters may want to suggest.

Since the statute now applies to foreign air carriers, the Department could simply rely on the efforts of our Aviation Enforcement and Proceedings office to respond to complaints of discrimination by passengers against foreign air carriers. While enforcement is an important task of the Department under the ACAA, using enforcement alone to implement the statute has disadvantages. The statute does not provide to foreign air carriers detailed advance notice of what the Department's expectations for compliance are, leading to considerable uncertainty. This approach would also result in case-by-case adjudications being the only way of determining what detailed requirements were, which would serve passengers less well than an articulated set of generally applicable standards. This approach would also create a disparity between the way U.S. carriers and foreign carriers would be expected to comply with the same underlying statutory requirement, contrary to the apparent intent of Congress that all carriers serving U.S. airports be treated similarly.

The Department could also wait for international action (*e.g.*, through the International Air Transport Association (IATA) or via bilateral or multilateral international agreements) to establish standards for air travel throughout the world. However, IATA frequently takes a long time to devise standards, and its standards are often advisory rather than mandatory. In any case, it would probably be much more difficult for the Department to enforce IATA materials than to enforce a DOT regulation. The issue of different compliance responsibilities for U.S. and foreign air carriers arises in this context as well. International agreements also typically take a much longer time to establish than a generally applicable rulemaking, and may not deal with accessibility issues in a uniform way that is transparent to passengers.

Because the rule will impose compliance requirements on U.S. and foreign carriers, the Department has produced a regulatory evaluation for this proposal, which we have placed into the docket. The evaluation estimates that incremental compliance costs will be approximately $16–21 million per year, plus an additional one-time cost of about $300,000 for web site accessibility. Twenty-year present value costs for compliance are estimated to range between $166 and $205 million.

As foreign air carrier service becomes more accessible, there will be obvious, though nonquantifiable, benefits to passengers with disabilities and persons traveling with them. The analysis also estimates that there will be tangible economic benefits to foreign air carriers themselves, in terms of increased revenue from the additional passengers that will be able to travel as barriers to travel are reduced. The range of these benefits is estimated to be approximately $326 to $615 million in 20-year present value terms, with the most probable benefit being $443 million.

Given the scale of the projected economic benefits of the rule, and the likelihood that foreign carriers do not face legal or regulatory barriers preventing them from providing accommodations that would produce these benefits, the question of why carriers have not voluntarily adopted such accommodations may arise. That is, since airlines presumably are no less interested than the next economic actor in maximizing profits, why have they not recognized these potential benefits and voluntarily taken the opportunity of increasing their income and profits by providing accommodations to passengers with disabilities, even in the absence of regulation?

The Department does not have information in its record concerning the thought processes of airline managements on this question. One possibility is that the notion that providing improved accommodations to passengers with disabilities can be a

source of additional revenue—and not merely a source of additional costs—has not occurred to airline managements. Alternatively, it might also be possible that, because the population of people with disabilities is perceived in some sectors to be much smaller than it actually is, the business case for accessibility improvements is not seriously examined. In either case, data would not have been collected on which to base carrier decisions. Economically rational, profit-maximizing behavior, flows—at least in theory—from accurate and complete information about market factors. If an economic actor has not looked for or seen the possibility of information about a given factor, then ideal-typical behavior may not occur. In this event, a failure to obtain data leads to a kind of market failure, which may be rectified as airlines implement the accommodations called for in the proposed rule.

The Department seeks information and comments on this matter, as well as on the regulatory assessment's approach to, and the accuracy of, its estimates of costs and benefits.

There are a number of other points of interest in the regulatory assessment to which the Department would call attention. One is the fact that much of the benefits analysis is based on Canadian data. The analysis then extrapolates from these data to the situation of foreign air carriers. As the regulatory assessment points out, this extrapolation involves a good deal of uncertainty, since the situations of other nations' air carriers and passenger populations may not replicate Canadian data and trends. This uncertainty is the primary reason for conducting the sensitivity analysis in Chapter 5 of the assessment. Nevertheless, the Canadian data is the most complete the Department has been able to find at this time. We seek comment and additional data from carriers, international organizations, and other sources that will augment the information available to the Department for purposes of the final rule.

There are also some classes of potential beneficiaries besides passengers with disabilities that the assessment mentions. These include friends and relatives of passengers with disabilities and some airline employees. The former would benefit by being able to travel more readily with a passenger with a disability (indeed, a family member of a disabled passenger might well forego the opportunity to travel if his or her spouse or child could not readily travel because of barriers that this proposed regulation tries to address). The latter would benefit because lift boarding requirements of the rule would reduce the chances of injury and time lost from work as the result of having to hand-carry passengers with disabilities onto and off of aircraft. The Department seeks comments on these and other potential classes of beneficiaries as well as any additional data that would help us more precisely analyze the effects of the proposed regulation on beneficiaries.

The Department certifies that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of small entities. The vast majority of passenger air traffic on international routes to and from U.S. airports is carried on airlines that are not small entities; the economic effects of the proposal on small carriers that fly international routes into and out of the U.S. (*e.g.*, commuter carriers on routes from Mexico, Canada, or the Caribbean) are not expected to be substantial. The proposed rule does not regulate state and local governments, and therefore would not have any Federalism impacts warranting a Federalism assessment. The proposed rule would not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them are relevant to this NPRM. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

Issued this 22nd day of October, 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 382 as follows:

1. Revise Part 382 to read as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Subpart A—General Provisions

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Appendix A to Part 382—Guidance Concerning Service Animals
Appendix B to Part 382—Disability Complaint Reporting Form [Reserved]

Authority: 49 U.S.C. 41702, 41310, 47105, and 41712.

Subpart A—General Provisions

§ 382.1 What is the purpose of this part?

The purpose of this part is to carry out the Air Carrier Access Act of 1986, as amended. This rule prohibits both U.S. and foreign air carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.

§ 382.3 What do the terms in this part mean?

In this part, the terms listed in this section have the following meanings:

Air carrier or *Carrier* means a U.S. or foreign citizen that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation.

Air Carrier Access Act or *ACAA* means the Air Carrier Access Act of 1986, as amended, the statute that provides the principal authority for this part.

Air transportation means interstate or foreign air transportation, or the transportation of mail by aircraft, as defined in 49 U.S.C. 40102.

Assistive device means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.

Department or *DOT* means the United States Department of Transportation.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means a carrier's aircraft and any portion of an airport that a carrier owns, leases, or controls (*e.g.,* structures, roads, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites, gates, other boarding locations, loading bridges) normally used by passengers or other members of the public.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical* or *mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy,

muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Qualified individual with a disability means an individual with a disability—

(a) Who, as a passenger (referred to as a ''passenger with a disability''), (1) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(2) With respect to obtaining air transportation, or other services or accommodations required by this part, (i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for air transportation on a carrier and presents himself or herself at the airport for the purpose of traveling on the flight to which the ticket pertains; and

(ii) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers; or

(b) Who, with respect to accompanying or meeting a traveler, using ground transportation, using terminal facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

Scheduled air service means any flight scheduled in the current edition of the *Official Airline Guide,* the carrier's published schedule, or the computer reservation system used by the carrier.

TSA means the Transportation Security Administration, an agency of the Department of Homeland Security.

United States or *U.S.* means the United States of America, including its territories and possessions.

§ 382.5 To whom do the provisions of this part apply?

(a) If you are a U.S. air carrier, this part applies to you with respect to all your operations and aircraft, regardless of where your operations take place.

(b) Except as provided in paragraph (c) of this section, if you are a foreign air carrier, this part applies to you only with respect to flights that begin or end at a U.S. airport and to aircraft used for these flights. For purposes of this part, a ''flight'' means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. The following are some examples of the application of this term:

Example 1: A passenger books a nonstop flight from Paris to Chicago. This is a ''flight'' for purposes of this part.

Example 2: A passenger books a journey on a foreign carrier from Washington, DC, to Berlin. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight, on the same or a different foreign carrier, that goes to Berlin. The Washington-Frankfurt leg of the journey is a ''flight'' for purposes of this part; the Frankfurt-Berlin leg is not (unless it is a code-shared flight with a U.S. carrier; see paragraph (c) of this section).

Example 3: A passenger books a journey on a foreign carrier from New York to Cairo. The plane stops for refueling and a crew change in London. The passengers reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Cairo. Both legs are parts of a covered ''flight'' for purposes of this part, with respect to passengers who board the flight in New York.

Example 4: In Example 3, the carrier is not required to provide services under this part to a passenger who boards the aircraft in London and goes to Cairo. Likewise, on the return trip, the foreign carrier is not required to provide services under this part to a passenger who boards the aircraft in Cairo and whose journey ends in London.

Example 5: If you are a foreign carrier that actually operates a flight that is also listed as a flight of a U.S. carrier through a code-sharing arrangement, the provisions of this part covering U.S. carriers apply to the flight.

(c) Notwithstanding any other provision of this section, if you are a foreign carrier that uses a particular aircraft in flights only between foreign airports, and you do not use the aircraft for any flights that begin or end at a U.S. airport, you are not required to comply with the aircraft accessibility requirements of Subpart E of this part with respect to that aircraft. However, you must comply with the service-related requirements of this part for any flight that is covered by this part (*e.g.,* a code-shared flight).

(d) Unless a provision of this part specifies application to a U.S. carrier or a foreign carrier, the provision applies to both U.S. and foreign carriers.

(e) If you are an indirect air carrier, §§ 382.17 through 382.157 of this part do not apply to you.

(f) Notwithstanding any provisions of this part, you must comply with all FAA safety regulations and TSA security regulations that apply to you.

§ 382.7 What may foreign carriers do if they believe a provision of a foreign nation's law prohibits compliance with a provision of this part?

(a) If you are a foreign carrier, and you believe that an applicable provision of the law of a foreign nation precludes you from complying with a provision of this part, you may request a waiver of the provision of this part.

(b) You must send such a waiver request to the following address:

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590.

(c) Your waiver request must include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the foreign law applies and how it precludes compliance with a provision of this part;

(3) A description of the alternative means the carrier will use, if the waiver is granted, to effectively achieve the objective of the provision of this part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) The Assistant General Counsel for Aviation Enforcement and Proceedings may grant the waiver request if he or she determines that the foreign law applies, that it does preclude compliance with a provision of this part, and that the carrier has provided an effective alternative means of achieving the objective of the provision of this part subject to the waiver or clear and convincing evidence that it would be impossible to achieve this objective in any way.

(e) Until and unless the Assistant General Counsel for Aviation Enforcement and Proceedings grants a waiver request, the carrier requesting the waiver remains subject to the provision of this part for which the waiver is sought.

§ 382.9 When are foreign air carriers required to begin complying with the provisions of this rule?

As a foreign air carrier, you are required to comply with the requirements of this part beginning [effective date of this part], except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services and Information

§ 382.11 What is the general nondiscrimination requirement of this part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§ 382.83(b), 382.85(b), and 382.123(b).

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this part; and

(4) You must not take any action against an individual (*e.g.*, refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act.

(b) If, as an indirect air carrier, you provide facilities or services for passengers that are covered for other carriers by sections §§ 382.17–382.157, you must do so in a manner consistent with those sections.

§ 382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

(a) As a carrier, you must modify your policies and practices as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) As a carrier, you must modify your facilities as needed to ensure nondiscrimination, consistent with the standards of the Americans with Disabilities Act Accessibility Guidelines (ADAAGs), as adopted by the Department of Transportation in 49 CFR part 37, appendix A.

(b) This requirement is part of your general nondiscrimination obligation, and is in addition to your duty to make the specific accommodations required by this part.

(c) However, you are not required to make modifications that would constitute an undue burden or would fundamentally alter your program.

§ 382.15 Do carriers have to make sure that contractors comply with the requirements of this part?

(a) As a carrier, you must make sure that your contractors who provide services to the public (including airports where applicable) meet the requirements of this part that would apply to you if you provided the services yourself.

(b) As a carrier, you must include an assurance of compliance with this part in your contracts with any contractors who provide to the public services that are subject to the requirements of this part. Noncompliance with this assurance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your Complaints Resolution Officials (CROs) under §§ 382.151 through 382.153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this part and with the assurances in your contracts with them.

(e) It is not a defense to an enforcement action by the Department under this part that your noncompliance resulted from action or inaction by a contractor.

§ 382.17 May carriers limit the number of passengers with a disability on a flight?

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also § 382.27(b)(7).)

§ 382.19 May carriers refuse to provide transportation on the basis of disability?

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in § 382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential harm to the health and safety of others will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this part.

(4) If your actions are inconsistent with any of the provisions of this part, you are subject to enforcement action under Subpart K of this part.

(d) If you refuse to provide transportation to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation.

§ 382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

(1) Refuse to provide transportation to the passenger;

(2) Delay the passenger's transportation (*e.g.*, require the passenger to take a later flight);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) In assessing whether the passenger's condition poses a direct threat and determining the least restrictive means of dealing with such a threat, you must apply the provisions of § 382.19(c)(1) through (2). For example, suppose a passenger with a communicable disease gives you a medical certificate of the kind described in § 382.23(c)(2) that describes measures for preventing transmission of the disease during the normal course of the flight. You must provide transportation to the passenger, unless you are unable to carry out the measures.

(c) If your action under this section results in the postponement of a passenger's travel, you must permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(d) If you take any action under this section that restricts a passenger's travel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

§ 382.23 May carriers require a passenger with a disability to provide a medical certificate?

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) You may also require a medical certificate for a passenger if he or she has a communicable disease or condition that poses a direct threat to the health or safety of others.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It must be dated within ten days of the date of the flight for which it is presented.

§ 382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?

As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.

§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraph (b) of this section, as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this part.

(b) You may require a passenger with a disability to provide up to 48 hours' advance notice and one-hour advance check-in to receive the following services and accommodations. The services listed in paragraphs (b)(1) through (4) of this paragraph are optional; you are not required to provide them, but you may choose to do so.

(1) Medical oxygen for use on board the aircraft;

(2) Carriage of an incubator;

(3) Hook-up for a respirator to the aircraft electrical power supply;

(4) Accommodation for a passenger who must travel in a stretcher;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft with more than 50 seats that does not have an accessible lavatory.

(c) If the passenger with a disability provides the advance notice you require, consistent this section, for a service that you must provide (see paragraphs (b)(5) through (8) of this section) or choose to provide (see paragraphs (b)(1) through (4) of this section), you must provide the requested service or accommodation.

(d) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(e) If a passenger with a disability provides the advance notice you require, consistent with this section, and the passenger is forced to change to another flight (*e.g.*, because of a flight cancellation), you must, to the maximum extent feasible, provide the accommodation on the new flight. If the new flight is another carrier's flight, you must provide the maximum feasible assistance to the other carrier in providing the accommodation the passenger requested from you.

(f) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the flight.

§ 382.29 May a carrier require a passenger with a disability to travel with a safety assistant?

(a) Except as provided in paragraph (b) of this section, you must not require that a passenger with a disability travel with another person as a condition of being provided air transportation.

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided air transportation, if you determine that a safety assistant is essential for safety:

(1) A passenger traveling in a stretcher or incubator. The safety assistant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b) or ICAO Standards and Recommended Practices, as applicable;

(3) A passenger with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A passenger who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4), 14 CFR 135.117(b), or ICAO Standards and Recommended Practices, as applicable.

(c) If you determine that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with a safety assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. However, if a passenger voluntarily chooses to travel with a personal care attendant or a safety assistant that you do not require, you may charge for the transportation of that person.

(d) If, because there is not a seat available on a flight for a safety assistant whom the carrier has determined to be necessary, a passenger with a disability holding a confirmed reservation is unable to travel on the flight, the passenger is eligible for denied boarding compensation under 14 CFR Part 250, if Part 250 applies to the flight.

(e) For purposes of determining whether a seat is available for a safety assistant, you must deem the safety assistant to have checked in at the same time as the passenger with a disability.

(f) Concern that a passenger with a disability may need personal care services (*e.g.*, assistance in using lavatory facilities or with eating) is not a basis for requiring the passenger to travel with a safety assistant. You must explain this clearly in training or information you provide to your employees.

§ 382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?

(a) As a carrier, you must not impose charges for providing facilities, equipment, or services that this rule requires to be provided to passengers with a disability. You may charge for services that this part does not require (*e.g.*, oxygen).

(b) You may charge a passenger for the use of more than one seat if the passenger's size or condition (*e.g.*, use of a stretcher) causes him or her to occupy the space of more than one seat. This is not considered a special charge under this section.

§ 382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a carrier, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise permitted in this part (*e.g.*, advance notice requirements for certain services permitted by § 382.27).

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation, services, or accommodations;

(3) Making passengers sit on blankets on the aircraft;

(4) Making passengers wear badges or other special identification (*e.g.*, similar to badges worn by unaccompanied minors);

(5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair in order to receive assistance required by this part (*e.g.*, by § 382.91) or otherwise offered to the passenger; or

(6) Otherwise mandating separate treatment for passengers with a disability, unless permitted or required by this part or other applicable Federal requirements.

§ 382.35 May carriers require passengers with a disability to sign waivers or releases?

(a) As a carrier, you must not require passengers with a disability to sign a release or waiver of liability in order to receive transportation or to receive services or accommodations for a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

Subpart C—Information for Passengers

§ 382.41 What flight-related information must carriers provide to qualified individuals with a disability?

As a carrier, you must provide the following information, on request, to qualified individuals with a disability or persons making inquiries on their behalf. The information you provide must be specific to the type of aircraft and, where feasible, the specific aircraft you expect to use for a flight:

(a) The specific location of seats, if any, with movable armrests (*i.e.*, by row and seat number);

(b) The specific location of seats (*i.e.*, by row and seat number) that the carrier, consistent with this part, does not make available to passengers with a disability (*e.g.*, exit row seats);

(c) Any limitations on the ability of the aircraft to accommodate passengers with a disability, including limitations on the availability of boarding assistance to the aircraft at any airport involved with the flight. You must provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(d) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability, including storage in the cabin of a passenger's wheelchair as provided in §§ 382.67 and 382.123; and

(e) Whether the aircraft has an accessible lavatory.

§ 382.43 Must information and reservation services of carriers be accessible to individuals with hearing and vision impairments?

(a) If, as a carrier, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing through use of a text telephone (TTY).

(1) You must make TTY service available during the same hours as telephone service for the general public.

(2) Your response time to TTY calls must be equivalent to your response time for your telephone service to the general public.

(3) If you are a foreign carrier, you must meet this requirement by [date one year from the effective date of this part].

(b) If you provide information or reservation services to the public through an internet web site (including a web site maintained by a contractor or agent for you or for you and other air

carriers), you must ensure that the web site is accessible to and usable by individuals with vision impairments and other disabilities.

(1) In making web sites accessible, you must use as your standards the provisions of 36 CFR Part 1194.

(2) New Web sites placed on line after [effective date of this part] must meet these accessibility standards from the time they are placed on line.

(3) Web sites that were placed on line before [effective date of this part] must meet these accessibility standards by [date two years from the effective date of this part].

(c) If, as a carrier, you provide written (*i.e.*, hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same languages(s) in which it is available to the general public.

(d) If you are a U.S. carrier, the requirements of this section apply with respect to all your information and reservation services. If you are a foreign air carrier, the requirements of this section apply only with respect to your information and reservations services concerning flights covered by § 382.5.

§ 382.45 Must carriers make copies of this part available to passengers?

As a carrier, you must keep a current copy of this part at each airport you serve. As a foreign carrier, this means that you must keep the copy at any airport serving a flight that begins or ends at a U.S. airport. You must make the copy available for review by any member of the public on request.

Subpart D—Accessibility of Airport Facilities

§ 382.51 What requirements must carriers meet concerning the accessibility of airport facilities?

(a) As a carrier, you must comply with the following requirements with respect to all terminal facilities you own, lease, or control at a U.S. airport:

(1) You must ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. You are deemed to comply with this obligation if the facilities meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(2) With respect to any situation in which boarding and deplaning by level-entry loading bridges or accessible passenger lounges to and from an aircraft is not available, you must ensure that there is an accessible route between the gate and the area from which aircraft are boarded (*e.g.*, the tarmac in a situation in which level-entry boarding is not available). An accessible route is one meeting the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), sections 4.3.3–4.3.10.

(3) You must ensure that systems of intra- and inter-terminal transportation, including, but not limited to, moving sidewalks, shuttle vehicles and people movers, comply with applicable requirements of the Department of Transportation's ADA rules (49 CFR Parts 37 and 38).

(4) Your contracts or leases with airport operators concerning the use of airport facilities must set forth your airport accessibility responsibility under this part and that of the airport operator under applicable section 504 and ADA rules of the Department of Transportation and Department of Justice.

(b) As a carrier, you must ensure that passengers with a disability can readily use all terminal facilities you own, lease, or control at a foreign airport. In the case of foreign carriers, this requirement applies only to terminal facilities that serve flights that begin or end in the U.S.

(1) This means that passengers with a disability must be able to move readily through such terminal facilities to get to or from the gate and any other area from which passengers board the aircraft you use for such flights (*e.g.*, the tarmac in the case of flights that do not use level-entry boarding). This obligation is in addition to your obligation to provide boarding assistance to passengers.

(2) You may meet this obligation through any combination of facility accessibility, auxiliary aids, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability.

(c) As a foreign air carrier, you must meet the requirements of this section by [date one year from the effective date of this part]. As a U.S. carrier, you must meet the requirements of paragraph (b) of this section by [date one year from the effective date of this part].

§ 382.53 What accommodations are required at airports for individuals with a vision impairment or individuals who are deaf or hard-of-hearing?

(a) As a carrier, you must ensure that individuals with impaired vision and deaf and hard-of-hearing individuals have access to the information you provide to the general public at airports. To the extent that this information is not available to these individuals through signage and verbal public address announcements, your personnel must promptly provide the information to such individuals on their request, in languages in which the information is provided to the general public.

(1)(i) As a U.S. carrier, you must make this information available at each gate, baggage claim area, ticketing area, or other terminal facility that you own, lease, or control at any U.S. or foreign airport.

(ii) As a foreign carrier, you must make this information available at each gate, baggage claim area, ticketing area, or other terminal facility that you own, lease, or control at any U.S. airport. At foreign airports, you must make this information available only at terminal facilities that serve flights that begin or end in the U.S.

(2) The types of information you must make available include, but are not limited to, information concerning ticketing, flight delays, schedule changes, changes to the aircraft being used for a flight, connections, flight check-in, gate assignments and changes, and the checking and claiming of luggage.

(b) As a foreign air carrier at a U.S. airport, or a U.S. or foreign air carrier at a foreign airport, you must meet the requirements of this section by [date one year from effective date of this rule].

§ 382.55 May carriers impose security screening procedures for passengers with disabilities that go beyond TSA requirements?

(a) All passengers, including those with disabilities, are subject to TSA security screening requirements at U.S. airports. In addition, passengers at foreign airports, including those with disabilities, may be subject to security screening measures required by law of the country in which the airport is located.

(b) If, as an air carrier, you impose security screening procedures for passengers with disabilities that go beyond those mandated by TSA (or, at a foreign airport, by legal requirements of the country in which the airport is located), you must ensure that they meet the following requirements:

(1) You must apply security screening procedures to passengers with disabilities in the same manner as to other passengers.

(2) You must not subject a passenger with a disability to special screening procedures because the person is traveling with a mobility aid or other assistive device if the person using the

aid or device clears the security system without activating it.

(i) However, your security personnel may examine a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item.

(ii) You may conduct security searches of qualified individuals with a disability whose aids activate the security system in the same manner as for other passengers.

(3) You must not require private security screenings of passengers with a disability to a greater extent, or for any different reason, than for other passengers.

(c) Except as provided in paragraph (c) of this section, if a passenger with a disability requests a private screening in a timely manner, you must provide it in time for the passenger to enplane.

(d) If you use technology that can conduct an appropriate screening of a passenger with a disability without necessitating a physical search of the person, you are not required to provide a private screening.

Subpart E—Accessibility of Aircraft

§ 382.61 What are the requirements for movable aisle armrests?

(a) As a carrier, you must ensure that aircraft with 30 or more passenger seats on which passenger aisle seats have armrests are equipped with movable aisle armrests on at least one-half of the aisle seats in which passengers with mobility impairments are permitted to sit under FAA safety rules.

(b) You are not required to provide movable armrests on aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(c) You must ensure that these movable aisle armrests are provided proportionately in all classes of service in the cabin. For example, if 80 percent of the aisle seats in which passengers with mobility impairments may sit are in coach, and 20 percent are in first class, then 80 percent of the movable aisle armrests must be in coach, with 20 percent in first class.

(d) For aircraft equipped with movable aisle armrests, you must configure cabins, or establish administrative systems, to ensure that individuals with mobility impairments or other passengers with a disability can readily identify and obtain seating in rows with movable aisle armrests. You must provide this information by specific seat and row number.

(e) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace an aircraft's seats with newly manufactured seats, you must provide movable aisle armrests as required by this section.

(f) As a foreign carrier, you must comply with the requirements of paragraphs (a) through (d) of this section with respect to new aircraft you operate that were initially ordered after [effective date of this part] or which are delivered to you after [date two years from the effective date of this part]. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that are initially ordered after April 5, 1990, or which are delivered to you after April 5, 1992.

(g) As a U.S. carrier, you must comply with paragraph (c) of this section with respect to new aircraft that are ordered after [effective date of this part] or that are delivered after [date two years from the effective date of this part].

(h) As a foreign carrier, you must comply with the requirements of paragraph (e) of this section with respect to seats ordered on or after [effective date of this part].

§ 382.63 What are the requirements for accessible lavatories?

(a) As a carrier, you must ensure that aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory.

(1) The accessible lavatory must permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair.

(2) The accessible lavatory must afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users.

(3) The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

(b) With respect to aircraft with only one aisle in which lavatories are provided, you may, but are not required to, provide an accessible lavatory.

(c) You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace a lavatory on an aircraft with more than one aisle, you must replace it with an accessible lavatory. If you replace a component of an inaccessible lavatory (*e.g.*, the sink) on an aircraft with more than one aisle, you must replace it with an accessible component.

(d) As a foreign carrier, you must comply with the requirements of paragraph (a) of this section with respect to new aircraft you operate that were initially ordered after [effective date of this part] or which are delivered to you after [date two years from the effective date of this part]. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which are delivered to you on or after April 5, 1992.

(e) As a foreign carrier, you must comply with the requirements of paragraph (c) of this section beginning [effective date of this part].

§ 382.65 What are the requirements concerning on-board wheelchairs?

(a) As a carrier, you must equip aircraft that have 50 or more passenger seats, and that have an accessible lavatory (whether or not having such a lavatory is required by § 382.63) with an on-board wheelchair.

(b) If a passenger asks you to provide an on-board wheelchair on a particular flight, you must provide it if the aircraft being used for the flight has 50 or more passenger seats, even if the aircraft does not have an accessible lavatory.

(1) The basis of the passenger's request must be that he or she can use an inaccessible lavatory but cannot reach it from a seat without using an on-board wheelchair.

(2) You may require the passenger to provide the advance notice specified in § 382.27 to receive this service.

(c) You must ensure that on-board wheelchairs meet the following standards:

(1) On-board wheelchairs must include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence.

(2) The chair must be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(d) As a foreign carrier, you must meet this requirement as of [date two years from the effective date of this part]. As a U.S. carrier, you must meet this requirement by [date two years from the effective date of this part] with respect to aircraft with 50–60 passenger seats.

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must designate, in each aircraft with 100 or more passenger seats, a priority space in the cabin of sufficient size to stow at least one folding, collapsible, or break-down passenger wheelchair the dimensions of which are within a space of 13 inches by 36 inches by 42 inches without having to remove the wheels or otherwise disassemble it. If a wheelchair exceeds this space while fully assembled but will fit if wheels or other components can be removed without the use of tools, you must remove the applicable components and stow the wheelchair in the designated space. In this case, stow the removed components in areas provided for stowage of carry-on luggage.

(b) As a foreign carrier, you must meet the requirement of paragraph (a) of this section by [date two years from the effective date of this part]. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were initially ordered after April 5, 1990, or which are delivered to you on or after April 5, 1992.

§ 382.69 [Reserved]

§ 382.71 What other aircraft accessibility requirements apply to carriers?

(a) As a carrier, you must maintain all aircraft accessibility features in proper working order.

(b) You must ensure that any replacement or refurbishing of the aircraft cabin or its elements does not reduce accessibility to a level below that specified in this part.

Subpart F—Seating Accommodations

§ 382.81 For which passengers must carriers make seating accommodations?

As a carrier, you must provide the following seating accommodations to the following passengers on request, if the passenger self-identifies to you as having a disability specified in this section:

(a) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, you must provide a seat in a row with a movable aisle armrest, if the aircraft is required to be equipped with such armrests. You must ensure that your personnel are trained in the location and proper use of movable aisle armrests, including appropriate transfer techniques.

(b) You must provide an adjoining seat for a person assisting a passenger with a disability in the following circumstances:

(1) When a passenger with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (*e.g.*, assistance with eating);

(2) When a passenger with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight;

(3) When a passenger with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight; or

(4) When you require a passenger to travel with a safety assistant (see § 382.29).

(c) For a passenger with a disability traveling with a service animal, you must provide, as the passenger requests, either a bulkhead seat or a seat other than a bulkhead seat.

(d) For a passenger with a fused or immobilized leg, you must provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

§ 382.83 Through what mechanisms do carriers make seating accommodations?

(a) If you are a carrier that provides advance seat assignments to passengers (*i.e.*, offers seat assignments to passengers before the day of the flight), you must comply with the requirements of § 382.81 by any of the following methods:

(1) You may ''block'' an adequate number of the seats used to provide the seating accommodations required by § 382.81.

(i) You must not assign these seats to passengers who do not meet the criteria of § 382.81 until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, you must assign a seat meeting the requirements of this section to a passenger with a disability meeting one or more of the requirements of § 382.81 who requests it, at the time the passenger initially makes the request.

(iii) If a passenger with a disability specified in § 382.81 does not make a request at least 24 hours before the scheduled departure of the flight, you must meet the passenger's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(2) You may designate an adequate number of the seats used to provide seating accommodations required by § 382.81 as ''priority seats'' for passengers with a disability.

(i) You must provide notice that all passengers assigned these seats (other than passengers with a disability listed in § 382.81) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section.

(ii) You may provide this notice through your computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(iii) You must assign a seat meeting the requirements of this section to a passenger with a disability listed in § 382.81 who requests the accommodation at the time the passenger makes the request. You may require such a passenger to check in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the passenger have been assigned to other passengers, you must reassign the seats of the other passengers as needed to provide the requested accommodation.

(iv) If a passenger with a disability listed in § 382.81 does not check in at least an hour before the scheduled departure of the flight, you must meet the individual's request to the extent practicable, but you are not required to reassign a seat assigned to another passenger in order to do so.

(b) If you assign seats to passengers, but not until the date of the flight, you must use the ''priority seating'' approach of paragraph (a)(2) of this section.

(c) If you do not assign seats to passengers , you must allow passengers specified in § 382.81 to board the aircraft before other passengers, including other ''preboarded'' passengers, so that the passengers needing seating accommodations can select seats that best meet their needs.

(d) As a carrier, if you wish to use a different method of providing seating assignment accommodations to passengers with disabilities from those specified in this subpart, you must obtain the written concurrence of the Department of Transportation. Contact the Department at the address cited in § 382.159.

§ 382.85 What seating accommodations must carriers make to passengers in circumstances not covered by § 382.81 (a) through (d)?

As a carrier, you must provide the following seating accommodations to a passenger who self-identifies as having

a disability other than one in the four categories listed in § 382.81 (a) through (d) and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services:

(a) As a carrier that assigns seats in advance, you must provide accommodations in the following ways:

(1) If you use the ''seat-blocking'' mechanism of § 382.83(a)(1) c, you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in § 382.81(a) through (d) makes a reservation more than 24 hours before the scheduled departure time of the flight, you are not required to offer the passenger one of the seats blocked for the use of passengers with a disability listed under § 382.81.

(ii) However, you must assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) If you use the ''designated priority seats'' mechanism of § 382.83(a)(2), you must implement the requirements of this section as follows:

(i) When a passenger with a disability not described in § 382.81 makes a reservation, you must assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request. You may require a passenger making such a request to check in one hour before the departure time of the flight.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in § 382.83(a)(2)(i).

(b) On flights where advance seat assignments are not offered, you must provide seating accommodations under this section by allowing passengers to board the aircraft before other passengers, including other ''preboarded'' passengers, so that the individuals needing seating accommodations can select seats that best meet their needs.

§ 382.87 What other requirements pertain to seating for passengers with a disability?

(a) As a carrier, you must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA safety requirements.

(b) In responding to requests from individuals for accommodations under this subpart, you must comply with FAA safety requirements, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(c) If a passenger's disability results in involuntary active behavior that would result in the person properly being refused transportation under § 382.19, and the passenger could be transported safely if seated in another location, you must offer to let the passenger sit in that location as an alternative to being refused transportation.

(d) If you have already provided a seat to a passenger with a disability to furnish an accommodation required by this subpart, you must not (except in the circumstance described in § 382.85(a)(2)(ii)) reassign that passenger to another seat in response to a subsequent request from another passenger with a disability, without the first passenger's consent.

(e) You must never deny transportation to any passenger in order to provide accommodations required by this subpart.

(f) You are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased in order to provide an accommodation required by this part.

§ 382.89 When do the requirements of this subpart begin applying to foreign carriers?

As a foreign carrier, the obligations of this subpart apply to you on [date 6 months from the effective date of this part].

Subpart G—Boarding, Deplaning, and Connecting Assistance

§ 382.91 What assistance must carriers provide to passengers with a disability in moving within the terminal?

(a) As an air carrier, you must provide assistance requested by or on behalf of a passenger with a disability in transportation between gates to make a connection to another flight. If the arriving flight and the departing connecting flight are operated by different carriers, the carrier that operated the arriving flight is responsible for providing this assistance, even if the passenger holds a separate ticket and/or reservation for the departing flight.

(b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving from the terminal entrance (or a vehicle drop-off point adjacent to the entrance) through the airport to the gate for a departing flight, or from the gate to the terminal entrance (or a vehicle pick-up point adjacent to the entrance) after an arriving flight. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage claim. It also includes a brief stop upon request at an accessible rest room or nearby takeout food vendor.

(c) As part of your obligation to provide assistance to passengers with disabilities in moving around the terminal (*e.g.*, between the terminal entrance and the gate, between gate and aircraft, from gate to gate for a connecting flight), you must assist passengers with disabilities, on request, with transporting their carry-on luggage. This obligation applies only to carry-on luggage which can be transported in the cabin, consistent with your carry-on luggage policy, this part, and FAA and TSA rules, or gate-checked.

§ 382.93 Must carriers offer preboarding to passengers with a disability?

As a carrier, you must offer preboarding to passengers with a disability who self-identify as needing additional time or assistance to board, stow accessibility equipment, or be seated. You must make the availability of this service known (*i.e.*, through an announcement) to all passengers in the gate area before each flight.

§ 382. 95 What are carriers' general obligations with respect to boarding, deplaning, and connecting assistance?

(a) As a carrier, you must promptly provide assistance requested by or on behalf of passengers with a disability, or offered by air carrier personnel and accepted by passengers with a disability, in enplaning, deplaning, and connecting to other flights. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, and/or on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(b) As a carrier, you must, except as otherwise provided in this subpart, provide boarding and deplaning assistance through the use of lifts or ramps at any U.S. commercial service airport with 10,000 or more annual enplanements where boarding and deplaning by level-entry loading bridges or accessible passenger lounges is not available.

§ 382.97 To which aircraft does the requirement to provide boarding and deplaning assistance through the use of lifts apply?

The requirement to provide boarding and deplaning assistance through the use of lifts applies with respect to all aircraft with a passenger capacity of 19 or more, with the following exceptions:

(a) Float planes;

(b) The following aircraft models: the Fairchild Metro, the Jetstream 31 and 32, the Beech 1900 (C and D models), and the Embraer EMB–120;

(c) Any other aircraft model determined by the Department of Transportation to be unsuitable for boarding and deplaning assistance by lift, ramp, or other suitable device. The Department will make such a determination if it concludes that—

(1) No existing boarding and deplaning assistance device on the market will provide access to the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees, or

(2) Internal barriers are present in the aircraft that would preclude passengers who use a boarding or aisle chair from reaching a non-exit row seat.

§ 382.99 What agreements must carriers have with the airports they serve?

(a) As a carrier, you must negotiate in good faith with the airport operator of each airport described in § 382.95(b) to ensure the provision of lifts for boarding and deplaning.

(b) You must have a written, signed agreement with the airport operator allocating responsibility for meeting the boarding and deplaning assistance requirements of this subpart between or among the parties. For foreign carriers, with respect to all covered aircraft, this requirement becomes effective [date one year from the effective date of this part].

(c) For foreign carriers, the agreement must provide that all actions necessary to ensure accessible boarding and deplaning for passengers with a disability are completed as soon as practicable, but no later than [date 24 months from the effective date of this part], with respect to all covered aircraft serving an airport described in § 382.95(b).

(d) Under the agreement, you may, as a carrier, require that passengers wishing to receive boarding and deplaning assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, you must nonetheless provide the boarding and deplaning assistance by lift if you can do so by making a reasonable effort, without delaying the flight.

(e) The agreement must ensure that all lifts and other accessibility equipment are maintained in proper working condition, and that inoperable lifts and equipment must be repaired or replaced expeditiously.

(f) All air carriers and airport operators involved are jointly and severally responsible for the timely and complete implementation of the agreement.

(g) You must make this agreement available, on request, to representatives of the Department of Transportation.

§ 382.101 What other boarding and deplaning assistance must carriers provide?

When level-entry boarding and deplaning assistance is not required to be provided under this subpart, you must, as a carrier, provide boarding and deplaning assistance by any available means to which the passenger consents. However, you must never use hand-carrying (*i.e.*, directly picking up the passenger's body in the arms of one or more personnel to effect a level change the passenger needs to enter or leave the aircraft), even if the passenger consents. The situations in which level-entry boarding is not required but in which you must provide this boarding and deplaning assistance include, but are not limited to, the following:

(a) The boarding or deplaning process occurs at a U.S. airport that is not a commercial service airport that has 10,000 or more enplanements per year;

(b) The boarding or deplaning process occurs at a foreign airport;

(c) You are using an aircraft subject to an exception from lift boarding and deplaning assistance requirements under § 382.97 (a) through (c);

(d) The deadlines established in § 382.99(c)(2) through (3) have not yet passed; or

(e) Circumstances beyond your control (*e.g.*, unusually severe weather; unexpected short-duration mechanical problems) prevent the use of a lift.

§ 382.103 May a carrier leave a passenger unattended in a wheelchair or other device?

As a carrier, you must not leave a passenger who has requested assistance unattended by your personnel in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes. This requirement applies even if another person (*e.g.*, family member, personal care attendant) is accompanying the passenger, unless the passenger explicitly waives the restriction.

Subpart H—Services on Aircraft

§ 382.111 What services must carriers provide to passengers with a disability on board the aircraft?

As a carrier, you must provide services within the aircraft cabin as requested by or on behalf of passengers with a disability, or when offered by air carrier personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(b) Assistance in preparation for eating, such as opening packages and identifying food;

(c) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(d) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(e) Assistance in stowing and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin.

(f) Effective communication with passengers who have vision impairments or who are deaf or hard-of-hearing, so that these passengers have timely access to information the carrier provides to other passengers (*e.g.*, weather, on-board services, flight delays, connecting gates at the next airport).

§ 382.113 What services are carriers not required to provide to passengers with a disability on board the aircraft?

As a carrier, you are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(a) Assistance in actual eating;

(b) Assistance within the restroom or assistance at the passenger's seat with elimination functions; and

(c) Provision of medical equipment or services, except as required by this part or FAA rules.

§ 382.115 What requirements apply to on-board safety briefings?

As a carrier, you must comply with the following requirements with respect to on-board safety briefings:

(a) You must conduct an individual safety briefing for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4), 14 CFR 135.117(b), or other FAA requirements.

(b) You may offer an individual briefing to any other passenger, but you may not require an individual to have such a briefing except as provided in paragraph (a) of this section.

(c) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with

respect to the general safety briefing. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not ''accepted'' the briefing.

(d) When you conduct an individual safety briefing for a passenger with a disability, you must do so as inconspicuously and discreetly as possible.

(e) As a carrier, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (*e.g.*, through use of open captioning or placement of a sign language interpreter in the video).

(1) You may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset can be placed in the video presentation without so interfering with it as to render it ineffective or it would not be large enough to be readable.

(2) If you are a foreign carrier, you may implement the requirements of this section by substituting captioned or interpreted video materials for uncaptioned/uninterpreted video materials as the uncaptioned/uninterpreted materials are replaced in the normal course of the carrier's operations.

§ 382.117 Must carriers permit passengers with a disability to travel with service animals?

(a) As a carrier, you must permit a service animal to accompany a passenger with a disability.

(b) You must permit the service animal to accompany the passenger with a disability in any seat in which the passenger sits, unless the animal obstructs an aisle or other area that must remain unobstructed to facilitate an emergency evacuation.

(c) If a service animal cannot be accommodated at the seat location of the passenger with a disability who is using the animal, you must offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold.

(d) You must accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.

(e) Whenever you decide not to accept an animal as a service animal, you must explain the reason for your decision to the passenger and document it in writing. A copy of the explanation must be provided to the passenger either at the airport, or within ten calendar days of the incident.

(f) Guidance concerning the carriage of service animals is found in appendix A to this part.

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

§ 382.121 What mobility aids and other assistive devices may passengers with a disability bring into the aircraft cabin?

(a) As a carrier, you must permit passengers with a disability to bring the following kinds of items into the aircraft cabin, provided that they can be stowed in designated priority storage areas or in overhead compartments or under seats, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(1) Wheelchairs, including manual wheelchairs and break-down or collapsible battery-powered wheelchairs;

(2) Other mobility aids, such as canes (including those used by persons with impaired vision), crutches, and walkers; and

(3) Other assistive devices for stowage or use within the cabin (*e.g.*, vision-enhancing devices, personal ventilators and respirators that use non-spillable batteries).

(b) In implementing your carry-on baggage policies, you must not count assistive devices (including the kinds of items listed in paragraph (a) of this section) toward a limit on carry-on baggage.

§ 382.123 What are the requirements concerning priority cabin stowage space for wheelchairs?

(a) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a passenger's typical adult-sized, folding, collapsible, or break-down wheelchair (including such battery-powered wheelchairs), you must, as a carrier, designate priority stowage space, as described below, for at least one such folding, collapsible, or break-down passenger wheelchair. This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(b) If you are a passenger with a disability who uses a wheelchair and takes advantage of a carrier's offer of the opportunity to preboard the aircraft, you may stow your wheelchair in this area, with priority over other items brought onto the aircraft by other passengers enplaning at the same airport, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(c) If you are a passenger with a disability who does not take advantage of a carrier offer of the opportunity to preboard, you may use the area to stow your wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

§ 382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?

(a) As a carrier, you must stow wheelchairs, other mobility aids, or other assistive devices in the baggage compartment if an approved stowage area is not available in the cabin or the items cannot be transported in the cabin consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) You must give wheelchairs, other mobility aids, and other assistive devices priority for stowage in the baggage compartment over other cargo and baggage. Where this priority results in other passengers' baggage being unable to be carried on the flight, you must make your best efforts to ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(c) You must provide for the checking and timely return of passengers' wheelchairs, other mobility aids, and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except:

(1) Where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or

(2) When the passenger requests the return of the items at the baggage claim area instead of at the door of the aircraft.

(d) In order to achieve the timely return of wheelchairs, you must ensure that passengers' wheelchairs, other mobility aids, and other assistive devices are among the first items retrieved from the baggage compartment.

§ 382.127 What procedures apply to stowage of battery-powered wheelchairs?

(a) Whenever baggage compartment size and aircraft airworthiness

considerations do not prohibit doing so, you must, as a carrier, accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(b) You may require that passengers with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If the passenger checks in after this time, you must nonetheless carry the wheelchair if you can do so by making a reasonable effort, without delaying the flight.

(c) If the battery on the passenger's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery can be loaded, stored, secured and unloaded in an upright position, you must not require the battery to be removed and separately packaged. Notwithstanding this requirement, you may remove and package separately any battery that appears to be damaged or leaking (or even deny transportation to the battery if the potential safety hazard is serious enough).

(d) When it is necessary to detach the battery from the wheelchair, you must, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. You may refuse to use packaging materials or devices other than those you normally use for this purpose.

(e) You must not drain batteries.

(f) At the request of a passenger, you must stow a folding, break-down or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in § 382.123, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items. If the wheelchair can be stowed in the cabin without removing the battery, you must not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, you must remove the battery and stow it in the baggage compartment as provided in paragraphs (c) and (d) of this section. In this case, you must permit the wheelchair, with battery removed, to be stowed in the cabin.

§ 382.129 What other requirements apply when passengers' wheelchairs, other mobility aids, and other assistive devices must be disassembled for stowage?

(a) As a carrier, you must permit passengers with a disability to provide written directions concerning the disassembly and reassembly of their wheelchairs, other mobility aids, and other assistive devices. You must carry out these instructions to the greatest extent feasible, consistent with FAA and TSA requirements concerning security, safety, and hazardous materials with respect to the stowage of carry-on items.

(b) When wheelchairs, other mobility aids, or other assistive devices are disassembled by the carrier for stowage, you must reassemble them and ensure their prompt return to the passenger. You must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which you received them.

§ 382.131 Do baggage liability limits apply to mobility aids and other assistive devices?

With respect to domestic transportation (i.e., transportation to which Warsaw or Montreal Convention liability limits do not apply), the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

Subpart J—Training and Administrative Provisions

§ 382.141 What training are carriers required to provide for their personnel?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must provide training, meeting the requirements of this paragraph, for all personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) You must ensure training to proficiency concerning:

(i) The requirements of this part and other applicable Federal regulations affecting the provision of air travel to passengers with a disability;

(ii) Your procedures, consistent with this part, concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and

(iii) For those personnel involved in providing boarding and deplaning assistance, the use of the boarding and deplaning assistance equipment used by the carrier and appropriate boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers.

(2) You must also train such employees with respect to awareness and appropriate responses to passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) You must consult with organizations representing persons with disabilities in developing your training program and your policies and procedures.

(4) You must ensure that all personnel who are required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(5) You must provide, or require your contractors to provide, training to the contractors' employees concerning travel by passengers with a disability. This training is required only for those contractor employees who deal directly with the traveling public, and it must be tailored to the employees' functions. Training for contractor employees must meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(6) The employees you designate as Complaints Resolution Officials (CROs), for purposes of § 382.151, must receive training concerning the requirements of this part and the duties of a CRO by [date 60 days from the effective date of this part]. For employees who have already received CRO training, this training may be limited to changes from the previous version of Part 382. Employees subsequently designated as Complaints Resolution Officials shall receive this training before assuming their duties under § 382.151. You must ensure that all employees performing the Complaints Resolution Official function receive annual refresher training concerning their duties and the provisions of this part.

(b) If you are a carrier that operates only aircraft with fewer than 19 passenger seats, you must provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and that they comply with the requirements of this part.

§ 382.143 When must carriers complete training for their personnel?

(a) As a U.S. carrier, you must meet the training requirements of § 382.141 by the following times:

(1) For crewmembers and other personnel subject to training required under 14 CFR part 121 or 135, who are employed on [effective date of this rule], within one year of that date or as part of their next scheduled recurrent training, whichever comes first.

(2) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after [effective date of this rule], before they assume their duties; and

(3) For other personnel whose employment in any given position commences after [effective date of this rule], within 60 days after the date on which they assume their duties.

(b) As a foreign carrier that operates aircraft with 19 or more passenger seats, you must provide training meeting the requirements of paragraph (a) of this section for all personnel who deal with the traveling public in connection with flights that begin or end at a U.S. airport, as appropriate to the duties of each employee. You must ensure that personnel required to receive training complete the training by the following times:

(1) For crewmembers or other personnel who are employed on [effective date of this rule], within one year of that date;

(2) For crewmembers whose employment commences after [date one year from the effective date of this rule], before they assume their duties;

(3) For other personnel whose employment in any given position commences after [date one year from the effective date of this rule], within 60 days after the date on which they assume their duties; and

(4) For crewmembers and other personnel who become employed after [effective date of this rule] but before [date one year from the effective date of this rule], by [date one year from the effective date of this rule] or a date 60 days from the date of their employment, whichever is later.

§ 382.145 What must carriers incorporate in their manuals?

(a) As a carrier that operates aircraft with 19 or more seats, you must incorporate procedures implementing the requirements of this part in the manuals or other guidance or instructional materials provided for the personnel who provide services to passengers, including, but not limited to, pilots, flight attendants, reservation and ticket counter personnel, gate agents, ramp and baggage handling personnel, and passenger service office personnel.

(b) You must make your manuals and other materials implementing this part available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of these materials must be changed in order to comply with this part, DOT will direct you to make appropriate changes. You must incorporate and implement these changes.

Subpart K—Complaints and Enforcement Procedures

§ 382.151 What are the requirements for providing Complaints Resolution Officials?

(a) As a carrier, you must designate one or more complaints resolution officials (CROs).

(b) You must make a CRO available at each airport you serve, during all times you are operating at that airport. You must make CRO service available in the language(s) in which you make your other services available to the general public.

(c) You may make the CRO available in person at the airport or via telephone, at no cost to the passenger. If a telephone link to the CRO is used, TTY service must be available so that persons with hearing impairments may readily communicate with the CRO.

(d) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, accommodations, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the CRO available at the airport. Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and web sites must provide information equivalent to that required by paragraph (d)(1) of this section to passengers with a disability using those services.

(3) In the situations covered by paragraphs (1) and (2) of this paragraph, the passenger must also be given the Department of Transportation's airline accessibility toll-free hot line phone number (800–778–4838 (voice); 800–455–9880 (TTY)).

(e) Each CRO must be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to passengers with a disability. The CRO is intended to be the carrier's ''expert'' in compliance with the requirements of this part.

(f) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the carrier. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

§ 382.153 What actions do CROs take on complaints?

When a complaint is made directly to a CRO (*e.g.*, orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO must take, or direct other carrier personnel to take, whatever action is necessary to ensure compliance with this part.

(b) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(c) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to pursue DOT enforcement action under this part. The CRO must provide the statement in person to the complainant at the airport if possible; otherwise, it must be forwarded to the complainant within 10 calendar days of the complaint.

§ 382.155 How must carriers respond to written complaints?

(a) As a carrier, you must respond to written complaints received by any means (e.g., letter, fax, e-mail, electronic instant message) concerning matters covered by this part.

(b) As a passenger making a written complaint, you must state whether you had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and

enclose any written response you received from the CRO.

(c) As a carrier, you are not required to respond to a complaint postmarked or transmitted more than 45 days after the date of the incident, except for complaints referred to you by the Department of Transportation.

(d) As a carrier, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT enforcement action under this part.

§ 382.157 What are carriers' obligations for recordkeeping and reporting on disability-related complaints? [Reserved]

§ 382.159 How are complaints filed with DOT?

(a) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: U.S. Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Washington, DC, 20590. The Web site for this office is *http://airconsumer.ost.dot.gov*.

(b) Any person believing that a carrier has violated any provision of this part may also file a formal complaint under the applicable procedures of 14 CFR Part 302.

(c) Requests for assistance and complaints must be filed no later than 18 months after the incident to ensure that they can be investigated.

Appendix A to Part 382—Guidance Concerning Service Animals

Introduction

In 1990, the U.S. Department of Transportation (DOT) promulgated the official regulations implementing the Air Carrier Access Act (ACAA). Those rules are entitled *Nondiscrimination on the Basis of Disability in Air Travel* (14 CFR Part 382). Since then the number of people with disabilities traveling by air has grown steadily. This growth has increased the demand for air transportation accessible to all people with disabilities and the importance of understanding DOT's regulations and how to apply them. This document expands on an earlier DOT guidance document published in 1996[1], which was based on an earlier Americans with Disabilities Act (ADA) service animal guide issued by the Department of Justice (DOJ) in July 1996. The purpose of this document is to aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining:

(1) Whether an animal is a service animal and its user a qualified individual with a disability;

(2) How to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and

(3) When a service animal legally can be refused carriage in the cabin. This guidance will also be used by Department of Transportation staff in reviewing the implementation of § 382.117 by air carriers.

Background

The 1996 DOT guidance document defines a service animal as ''any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government.'' This document refines DOT's previous definition of service animal[2] by making it clear that animals that assist persons with disabilities by providing emotional support qualify as service animals and ensuring that, in situations concerning emotional support animals, the authority of airline personnel to require documentation of the individual's disability and the medical necessity of the passenger traveling with the animal is understood.

Today, both the public and people with disabilities use many different terms to identify animals that can meet the legal definition of ''service animal.'' These range from umbrella terms such as ''assistance animal'' to specific labels such as ''hearing,'' ''signal,'' ''seizure alert,'' ''psychiatric service,'' ''emotional support'' animal, etc. that describe how the animal assists a person with a disability.

When Part 382 was promulgated, most service animals were guide or hearing dogs. Since then, a wider variety of animals (*e.g.*, cats, monkeys, etc.) have been individually trained to assist people with disabilities. Service animals also perform a much wider variety of functions than ever before (*e.g.*, alerting a person with epilepsy of imminent seizure onset, pulling a wheelchair, assisting persons with mobility impairments with balance). These developments can make it difficult for airline employees to distinguish service animals from pets, especially when a passenger does not appear to be disabled, or the animal has no obvious indicators that it is a service animal. Passengers may claim that their animals are service animals at times to get around airline policies that restrict the carriage of pets. Clear guidelines are needed to assist airline personnel and people with disabilities in knowing what to expect and what to do when these assessments are made.

Since airlines also are obliged to provide all accommodations in accordance with FAA safety regulations, educated consumers help assure that airlines provide accommodations consistent with the carriers' safety duties and responsibilities. Educated consumers also assist the airline in providing them the services they want, including accommodations, as quickly and efficiently as possible.

General Requirements of Part 382

In a nutshell, the main requirements of Part 382 regarding service animals are:

- Carriers shall permit dogs and other service animals used by persons with disabilities to accompany the persons on a flight. See § 382.117(a).
- ► Carriers shall accept as evidence that an animal is a service animal identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.
- ► Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations.
- If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying, the carrier shall offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold (see § 382.117(c)).
- Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability (see § 382.31).

Two Steps for Airline Personnel

To determine whether an animal is a service animal and should be allowed to accompany its user in the cabin, airline personnel should:

1. Establish whether the animal is a pet or a service animal, and whether the passenger is a qualified individual with a disability; and then

2. Determine if the service animal presents either

- A ''direct threat to the health or safety of others,'' or
- A significant threat of disruption to the airline service in the cabin (*i.e.* a ''fundamental alteration'' to passenger service). See § 382.19(c).

Service Animals

How do I know it's a service animal and not a pet?

Remember: In most situations *the key is TRAINING.* Generally, a service animal is individually trained to perform functions to assist the passenger who is a qualified individual with a disability. In a few extremely limited situations, an animal such

[1] 61 FR 56409, 56420 (Nov. 1, 1996).

[2] See Glossary for definition of this and other terms.

as a seizure alert animal may be capable of performing functions to assist a qualified person with a disability without individualized training. Also, an animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: an animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.

These five steps can help one determine whether an animal is a service animal or a pet:

1. *Obtain credible verbal assurances:* Ask the passenger: ''Is this your pet?'' If the passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:

► ''What tasks or functions does your animal perform for you?'' or

► ''What has it been trained to do for you?''

► ''Would you describe how the animal performs this task (or function) for you?''

• As noted earlier, functions include, but are not limited to:

A. Helping blind or visually impaired people to safely negotiate their surroundings;

B. Alerting deaf and hard-of-hearing persons to sounds;

C. Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or

D. Alert or respond to a disability-related need or emergency (*e.g.*, seizure, extreme social anxiety or panic attack).

• Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

• If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (see Documentation below).

• There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (*e.g.*, seizure alert). Such an animal may not have been trained through a formal training program (*e.g.*, a ''school'' for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a ''credible verbal assurance'' that the animal has been trained to perform a function for the passenger.

2. *Look for physical indicators on the animal:* Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however, that the absence of such equipment does not necessarily mean the animal is not a service animal.

3. *Request documentation for service animals other than emotional support animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal. Carriers are not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. This should be an infrequent situation. The purpose of documentation is to substantiate the passenger's disability-related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (*e.g.*, physician, mental health professional, vocational case manager, etc.)

4. *Require documentation for emotional support animals:* With respect to an animal used for emotional support (which need not have specific training for that function but must be trained to behave appropriately in a public setting), airline personnel may require current documentation (*i.e.*, not more than one year old) on letterhead from a mental health professional stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; and (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. An airline is allowed, but not required, to insist that the documentation include the date, type, and state of the mental health professional's license. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, *e.g.*, panic attacks.

5. *Observe behavior of animals:* Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What about service animals in training?

Part 382 requires airlines to allow service animals to accompany their handlers [3] in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals provided that they comply with other applicable requirements (*e.g.*, the Animal Welfare Act). Although ''service animals in training'' are not pets, the ACAA does not include them, because ''in training'' status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

What about a service animal that is not accompanying a qualified individual with a disability?

When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

Qualified Individuals With Disabilities [4]

How do I know if a passenger is a qualified individual with a disability who is entitled to bring a service animal in the cabin of the aircraft if the disability is not readily apparent?

• Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, ''How does your animal assist you with your disability?'' Avoid the question ''What is your disability?'' as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.

• Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support animal.

• Using the questions and other factors above, you must decide whether it is

[3] Service animal users typically refer to the person who accompanies the animal as the ''handler.''

[4] See Glossary.

reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What do I do if I believe that carriage of the animal in the cabin of the aircraft would inconvenience non-disabled passengers?

Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not (1) pose a direct threat to the health or safety of others (*e.g.*, animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or (2) cause a significant disruption in cabin service (*i.e.* a ''fundamental alteration'' to passenger service). Inconvenience of other passengers is not sufficient grounds to deny a service animal carriage in the cabin; as indicated later in this document, however, airlines are not required to ask other passengers to relinquish space that they would normally use in order to accommodate a service animal (*e.g.*, space under the seat in front of the non-disabled passenger).

What do I do if I believe that a passenger's assertions about having a disability or a service animal are not credible?

- Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (see discussion of ''Documentation'' above).
- If the passenger has no documents, then explain to the passenger that the animal cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (*i.e.*, will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.
- If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's *complaint resolution official (CRO).* Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.
- Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with part 382.
- If a CRO makes the final decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within ten business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

- Certain unusual service animals (*i.e.* snakes, other reptiles, ferrets, rodents and spiders) pose unavoidable safety and/or public health concerns and airlines are not required to transport them.
- In all other circumstances, each situation must be considered individually. Do not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.
- Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (*e.g.*, muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with Part 382 and company policy (*e.g.*, accept the animal for carriage in the cargo compartment at no cost to the passenger).

What about unusual service animals?

- As indicated above, certain unusual service animals, *i.e.* snakes, other reptiles, ferrets, rodents and spiders, pose unavoidable safety and/or public health concerns and airlines are not required to transport them. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.
- Other unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy.

Miscellaneous Questions

What about the passenger who has two or more service animals?

- A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as necessary to retrieve them in the appropriate location.

What if the service animal is too large to fit under the seat in front of the customer?

- If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by part 382, including transporting their oversized service animals in the cargo compartment.

Should passengers provide advance notice to the airline concerning multiple or large service animals?

In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

What if an airline employee or another passenger on board is allergic or has an adverse reaction to a passenger's service animal?

Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Whether or not an individual's allergies or animal aversions are disabilities (an issue this Guidance does not address), each individual's needs should be addressed

to the fullest extent possible under the circumstances and in accordance with the requirements of part 382 and company policy.

Accommodating Passengers With Service Animals in the Cabin

How can airline personnel help ensure that passengers with service animals are assigned and obtain appropriate seats on the aircraft?

• Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) Should the passenger request pre-boarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

• Passengers generally know what kinds of seats best suit their service animals. In certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.38 requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

• Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines announce pre-boarding for passengers with special needs, although it may be available. If you wish to request pre-boarding, tell the agent at the gate.

• Unless pre-boarding is not part of your carrier's business operation, a timely request for pre-boarding by a passenger with a disability should be honored (382.38(d)).

• Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.7(c)). Therefore, the following are *not* required in providing accommodations for users of service animals and are examples of what might realistically be viewed as creating an undue burden:

► Asking another passenger to give up the space in front of his or her seat to accommodate a service animal;

► Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;

► Furnishing more than one seat per ticket; and

► Providing a seat in a class of service other than the one the passenger has purchased.

Are airline personnel responsible for the care and feeding of service animals?

Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May an air carrier charge a maintenance or cleaning fee to passengers who travel with service animals?

Part 382 prohibits air carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, an air carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers With Service Animals

• Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) Should a passenger request pre-boarding at the gate? or (2) should a passenger request an advance seat assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

• Although airlines are not permitted to automatically require documentation for service animals other than emotional support animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

• If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

• You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

• Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for pre-boarding—if that is your desire.

• Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's pre-board offer.

• If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

• If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's *complaint resolution official (CRO)*. Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

• Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's aviation consumer disability hotline. The toll-free number is 1–800–778–4838 (voice) and 1–800–455–9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual With a Disability

''Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.'' (Section 382.3).

Qualified Individual With a Disability

Any individual with a disability who:

(1) ''takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies'';

(2) ''offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain * * * a ticket'' ''for air transportation on an air carrier''; or

(3) ''purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers.'' (Section 382.3).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger.

Sources

In addition to applicable provisions of part 382, the sources for this guidance include the following: ''Guidance Concerning Service Animals in Air Transportation,'' (61 FR 56420–56422, (November 1, 1996)), ''Commonly Asked Questions About Service Animals in Places of Business'' (Department of Justice, July, 1996), and ''ADA Business Brief: Service Animals'' (Department of Justice, April 2002).

Appendix B to Part 382—Disability Complain Reporting Form

Disability Complaint Reporting Form [Reserved]

[FR Doc. 04–24371 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–62–P

Federal Register

Thursday,
November 4, 2004

Part III

Federal Maritime Commission

46 CFR Parts 501 and 535

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984; Final Rule

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 535

[Docket No. 03–15]

RIN 3072–AC28

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984; Final Rule

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issued a Notice of Proposed Rulemaking on December 2, 2003, that set forth proposed changes in the Commission's regulations for Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984. The proposal also included changes to the delegation of authority to the Commission's Bureau of Trade Analysis. The Commission requested that comments be filed by January 30, 2004. This notice of Final Rule summarizes the comments submitted and revises the proposed regulations based on those comments.

DATES: This rule is effective on January 3, 2005, except for §§ 535.702 and 535.703, which are effective February 2, 2005, and § 535.701(e), which is stayed until further notice.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Notice of Proposed Rulemaking ("NPR") (68 FR 67510, Dec. 2, 2003) sought to amend the Commission's regulations governing the filing of agreements pursuant to the Shipping Act of 1984, 46 U.S.C. 1701–1719 ("Shipping Act"). In particular, the NPR addressed the concerns that had been raised by regulated entities that are parties to agreements regarding regulatory certainty, flexibility, and confidentiality. These concerns were raised in comments submitted in response to a Notice of Inquiry published by the Commission on August 3, 1999. 64 FR 42057. Specifically, in the NPR the Commission proposed the following changes to 46 CFR parts 501 and 535: the addition of new delegations of authority to the Commission's Director, Bureau of Trade Analysis ("BTA"); revisions to the requirements for the content of filed agreements, including a new exemption for "low market share" agreements (proposed 46 CFR 535.311) and a new term "capacity rationalization" (proposed 46 CFR 535.104(e)); revisions to its current exemptions for "non-substantive" and "miscellaneous" modifications and transshipment agreements (proposed 46 CFR 535.302, 535.309, 535.104(jj) and 535.306(a)); a revision to 46 CFR 535.602(a) (to indicate that the Commission will submit a notice to the **Federal Register** for publication of all filed agreements); revised requirements for information to be submitted in conjunction with filed agreements (proposed 46 CFR part 535, subparts E and G); and miscellaneous changes to update, clarify, and remove obsolete language from its rules (proposed 46 CFR 535.303, 535.304, 535.403, 535.605, 535.606, 535.607).

Six comments on the NPR were received. These came from Maersk Sealand ("MSL"); American President Lines, Ltd. and APL Co. Pte., Ltd. ("APL"); P&O Nedlloyd Limited ("PONL"); FESCO Ocean Management Limited ("FOML"); Trans-Net, Inc. ("Trans-Net"); and the Ocean Common Carriers and Agreements ("OCCA").[1] Trans-Net also made oral presentations to individual Commissioners.

II. Agreement Content and Transshipment Agreements

A. Agreement Content—Generally and Proposed Exemptions

1. Summary of Comments

APL notes that the operations of global alliances are extremely complex and fluid, and are affected by factors outside the U.S. trades. APL at 1. APL stresses: (1) the critical importance that alliances and vessel sharing agreements ("VSAs") have flexibility to make operating decisions on a timely and efficient basis; and (2) that a major alliance is a continuous work in progress. *Id.* at 2. Although APL takes no issue with the NPR's assertions about the effect of the capacity/demand relationship on rates, APL urges the Commission to consider that alliances and other VSAs give carriers the ability to achieve efficiencies and cost savings, which in turn result in benefits to shippers through improved service levels and increases in capacity. *Id.* at 2–3.

APL describes the operational matters of alliance agreements as often evolving via e-mail exchanges augmenting the original document, an "implementing agreement" and separate documents that may set forth particular aspects of cooperation. *Id.* at 3. APL believes that it is not entirely realistic to suggest that the commercial agreement among alliance partners is "relatively static once signed, or that the full commercial agreement is contained in a readily identifiable single document." *Id.* at 4. On the other hand, APL believes that the NPR achieves a balanced approach through the combination of specified exemptions to the filing requirements for operations-related matters paired with an increase in monitoring report

[1] OCCA includes the following FMC-filed agreements and carriers that participate in them: ABC Discussion Agreement; Australia/United States Containerline Association; Australia/United States Discussion Agreement; Caribbean Shipowners Association; Central America Discussion Agreement; East Coast of South America Discussion Agreement; Eastern Mediterranean Discussion Agreement; Florida Bahamas Shipowners Association; Grand Alliance Agreement II; Hispaniola Discussion Agreement; Israel Trade Conference; New Caribbean Service Rate Agreement; New Zealand/United States Inter-carrier and Conference Discussion Agreement; New Zealand/United States Container Lines Association Conference; Trans-Atlantic Conference Agreement; Transpacific Stabilization Agreement; United States/Australasia Discussion Agreement; United States/South Europe Conference; Venezuelan Discussion Agreement; West Coast of South America Discussion Agreement; and Westbound Transpacific Stabilization Agreement.

The individual carriers are: A.P. Moller-Maersk A/S; Allianca Navegacao e Logistica Ltda.; American President Lines, Ltd. and APL Co. PTE Ltd.; Arawak Line Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line and Contship Containerlines, divisions of CP Ships (UK) Limited; Bahamas Ro Ro Service (Freeport), Inc.; Bernuth Lines, Ltd.; Caicos Cargo Ltd. d/b/a Turks Island Shipping Line; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compagnie Maritime Marfret S.A.; Companhia Libra de Navegacao; Compania Chilena de Navigacion Interoceania, S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Evergreen Marine Corporation (Taiwan) Limited; Farrell Lines, Inc.; FESCO Ocean Management Inc.; Frontier Liner Services, Inc.; G&G Marine, Inc.; Hamburg Sudamerikanische Dampfschifffahrts-Gesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Interline Connection, N.V.; Kawasaki Kisen Kaisha, Ltd.; King Ocean Services Limited; King Ocean Services de Venezuela; LauritzenCool AB; Seatrade Group N.V.; Lykes Lines Limited, LLC; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Nippon Yusen Kaisha; Orient Overseas Container Line Inc., Orient Overseas Container Line Limited, and Orient Overseas Container Line (Europe) Limited; P&O Nedlloyd B.V and P&O Nedlloyd Limited; Pioneer Shipping, Ltd.; Seafreight Line, Ltd.; Seaboard Marine, Ltd.; South Pacific Shipping Co., Ltd.; Tecmarine Lines, Inc.; Trinity Shipping Line, S.A.; Tropical Shipping & Construction, Ltd.; Turkon Container Transportation and Shipping, Inc.; Wallenius Wilhelmsen Lines AS; Yangming Marine Transport Corp.; and Zim Israel Navigation Co., Ltd.

obligations. It strongly supports the NPR's codification of current practice as outlined in proposed section 535.408(b). *Id.* at 4, 5.

OCCA and MSL support the elimination of the 45-day waiting period for space charters and other operational agreements, particularly in instances where the parties' combined market shares do not give rise to serious competitive concerns. OCCA at 9; MSL at 1. MSL also argues that eliminating the waiting period for space charters and similar agreements would not undermine the Commission's regulatory oversight, as the proposed exemption would not relieve the subject agreements from either the substantive requirements of the Shipping Act or its filing requirement. MSL at 2.

Nevertheless, OCCA and MSL believe that the market share threshold for a "low market share'' agreement should be increased from 15 percent to 30 percent if operating within a pricing agreement, and from 20 percent to 35 percent if not. OCCA at 11; MSL at 2. OCCA argues that the market share considered for the low market share exemption should include the entire agreement scope because doing so would increase the relief provided by the exemption. OCCA at 10. OCCA submits that an agreement with low overall market share that includes one or more small sub-trades in which it has a large market share should not be disqualified from the exemption. *Id.* OCCA argues that the Commission has read the *Antitrust Guidelines for Collaborations Among Competitors* ("Antitrust Guidelines'') too narrowly, and believes that the types of agreements which would be eligible for the proposed low market share exemption are just the types of efficiency enhancing and/or competitively neutral arrangements contemplated by those Guidelines. *Id.* at 11–12. Further, OCCA points out that the European Commission regulation levels are set at 30 percent and 35 percent. OCCA also recommends that the Commission's regulations state that the time period used to determine market share will be the most recent calendar quarter for which such data is available, because this is the same period the Information Form rules require. *Id.* at 10–11.

In addition to its other suggestions, OCCA urges the Commission to include specific activities in proposed section 535.408(b) exempting certain activities from amendment filing, namely: insurance; procedures for resolution of disputes relating to loss and/or damage of cargo; maintenance of books and records; force majeure clauses; procedures for allocating space and forecasting demand; and schedule adjustments. *Id.* at 12–13. OCCA argues that the catch-all provision in section 535.408(b)(5), which it asserts generally covers operational matters and is not restricted to a specific list, would not require modification to include these matters. *Id.* at 13.

Finally, OCCA requests that the Commission adopt a new exemption from the notice and waiting requirements to allow agreement amendments reflecting a change in party due to corporate acquisition to become effective upon filing. *Id.* This, OCCA asserts, would prevent a gap in antitrust immunity due to matters over which the Commission has no jurisdiction. *Id.* at 14. OCCA also requests that the disused term "classes'' in sections 535.103(b) and 535.103(d) be replaced with a generic term such as "types''; and that "or a portion thereof'' be added to the end of the provision in section 535.302(b)(1) to indicate that cancellation of an agreement, in part or in whole, is a "miscellaneous modification'' which may take effect upon filing. *Id.* at 15. OCCA believes these technical revisions would codify current practice and conform to other portions of the Commission's rules. *Id.* OCCA also recommends that the Commission provide agreement parties some period of time (for example, six months) from the effective date of the regulations to comply with the new requirements, and to prevent the revised regulation from having retroactive application. *Id.* at 16.

B. Discussion

The Commission is gratified that the comments generally recognize and agree with the NPR's stated purpose and approach in proposing an exemption from the statutory 45-day waiting period for agreements that contain neither capacity rationalization nor pricing authority. In response to the commenters' specific suggestions, the Commission has determined to revise the proposed rule as discussed below.

1. 46 CFR 535.402

The NPR included a proposal to replace sections 535.103(g) and 535.407(a) with a new section 535.402 to serve as a single controlling rule reasserting and clarifying the Commission's interpretation of the Shipping Act's requirements for the content of a filed agreement. The Commission agrees with APL's comments that the approach it has taken, namely reaffirming its interpretation of the Shipping Act to require the filing of the true and complete agreement balanced by additional exemptions and reductions in the filing, waiting period, and reporting requirements of the Commission's rules, achieves the balance the Commission articulated in the NPR.

2. 46 CFR 535.103(b), 535.103(d)

The Commission agrees with OCCA's suggestion that the term "classes'' as it appears in proposed section 535.103(b), in light of the Commission's new approach to its information submission requirements, is no longer appropriate. The Final Rule changes the term, as suggested by OCCA, from "classes'' to "types.'' However, as to the Commission's use of the term "classes'' in proposed section 535.103(d), describing the Commission's exemption authority for "classes of agreements'' from requirements of the Shipping Act or these rules, the Commission has determined to retain the term as it mirrors the language of section 16 of the Shipping Act, 46 U.S.C. app. 1715.

3. 46 CFR 535.302(b)(1)

We agree with OCCA's suggestion that "or a portion thereof'' be included in 46 CFR 535.302(b)(1), which will therefore allow cancellation of an agreement, or a portion thereof, to become effective upon filing. Much like amendments that delete an agreement party (46 CFR 535.302(b)(2)), the Commission believes cancellation of a portion of an agreement that, for example, would reduce the geographic scope or authority of an agreement, appears unlikely to have any potentially detrimental effects and therefore may become effective upon filing. The Final Rule reflects these changes.

4. 46 CFR 535.602(a)

No comments were received opposing the proposed changes to this provision indicating the Commission will transmit notices of all filed agreements, and their amendments, to the **Federal Register** for publication, and it is adopted in this Final Rule.

5. 46 CFR 535.311

The Commission proposed a new exemption from the Shipping Act's standard 45-day waiting period for "low market share agreements.'' The Final Rule reflects commenters'' request that the market share level of such low market share agreements be raised, but the Commission declines to expand the definition of "market'' for the exemption.

The commenters are correct to note that the Commission's proposed rule used the Antitrust Guidelines and

European regulations, which outline the types and size of competitor collaborations those regulators have represented they would presume lawful under generally-applicable competition laws, as points of departure for an exemption it may reasonably establish within the confines of section 16 of the Shipping Act. As such, the Commission is persuaded that the sub-trade market share levels for this exemption may be raised without exceeding the limitations of section 16 of the Shipping Act. We therefore adopt OCCA's and MSL's suggestion to permit certain agreements with less than 35 percent market share in any sub-trade in which they operate, or 30 percent market share if operating within another agreement with the authorities listed in 46 CFR 502(b), to be exempt from the 45-day notice and waiting period and the Information Form requirements (subpart E of this part), and thereby become effective upon filing.

We have revised the provision to clarify that such low market share agreements do not include agreements containing any of the authorities listed at section 535.502(b). The provision is revised thus:

(a) Low market share agreement means an agreement among ocean common carriers which contains none of the authorities listed in 535.502(b) and for which the combined market share of the parties in any of the agreement's sub-trades is either:

(1) Less than 30 percent, if all parties are members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b); or

(2) Less than 35 percent, if all parties are not members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b).

This is consistent with agreements required to file minutes under section 535.704(a)(1).

We decline, however, to adopt the commenters' suggestion to make the exemption based upon the entire agreement trade, and find that basing the market share limit on sub-trades is a better measure for competitive concerns, as the geographic scope of an agreement may be extremely broad. We note that the definition of a sub-trade in section 535.104(hh) is revised by combining the U.S. East Coast and U.S. Gulf Coast segments of the trade and that this combination will provide regulatory relief to filers of agreements that are unlikely to have major implications on competition. Section 535.311 of the Final Rule is revised to reflect this change.

In response to the commenters' request for guidance on market shares for purposes of determining whether an agreement may be eligible for the low market share exemption, and in the interests of consistency, we have determined that the appropriate period should be the same as that found in the Commission's Information Form rules (appendix A to this part), namely the latest available calendar quarter. We encourage parties to seek the opinion of the Director, BTA, available under section 535.311(c), as to whether a proposed agreement may qualify for the exemption prior to filing. As with other exemptions, filers wishing to invoke this low market share exemption should note such a desire in the transmittal letter accompanying the filing. In the Final Rule, the Commission has added a cross-reference to the appropriate filing fee for low-market share agreements in new section 535.311(d).

We are confident that the exemptions reflected in this Final Rule provide the industry flexibility for the matters it has identified as requiring flexibility within the confines of the Shipping Act. As such, we have revised the proposed rule at section 535.408 to include all the matters OCCA's comments suggest, and to codify current Commission practice. The term "such as,'' which appeared in proposed section 535.408(b)(5), is removed in the Final Rule in the interest of certainty. As proposed, section 535.408(a)reads,

(a) Agreements that arise from authority of an effective agreement but whose terms are not fully set forth in the effective agreement to the extent required by § 535.402 are permitted without further filing only if they:

(1) Are themselves exempt from the filing requirements of this part (pursuant to subpart C—Exemptions of this part); or

(2) Concern matters set forth in paragraph (b) of this section.

The Final Rule revises section 535.408(a)(2) to read, "(2) are listed in paragraph (b) of this section'' instead of "concern matters set forth in paragraph (b) of this section.'' This more accurately reflects the Commission's intent, as explained in the NPR, that it will no longer interpret what may fall under "operational'' activities on an "ad hoc'' basis.

Proposed section 535.408(b)(2) is revised to codify the Commission's existing policy as to what may be acted upon without further amendment to a filed agreement. The NPR proposed, "The terms and conditions of space allocation and slot sales, the establishment of space charter rates, and terms and conditions of charter parties.'' The Final Rule revises the section as follows:

(2) The terms and conditions of space allocations and slot sales, the procedures for allocating space, the establishment of space charter rates, and the terms and conditions of charter parties.

The Commission intends "procedures for allocating space'' to mean the method by which parties will make requests for space or notification of space availability, *e.g.*, whether by e-mail, telephone, etc., and to which individual or department such requests or notices should be directed.

Similarly, section 535.408(b)(4) as proposed is revised to add two matters correctly identified by the commenters as reasonable to include in the exemption from further filing, namely, procedures for anticipating parties' space requirements and the maintenance of books and records. The Final Rule revises the proposed language:

(4) The following administrative matters:

(i) Scheduling of agreement meetings;

(ii) Collection, collation and circulation of data and reports from or to members;

(iii) Procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals;

(iv) Procedures for anticipating parties' space requirements;

(v) Maintenance of books and records; and

(vi) Details as to the following matters as between parties to the agreement: insurance; procedures for resolutions of disputes relating to loss and/or damage of cargo; and force majeure clauses.

For clarity's sake, the Commission notes its intention that "procedures for anticipating parties' space requirements'' includes changes to how members inform one another of their anticipated needs, but does not include changes to how parties discuss market demand on a broader level.

As noted in the NPR, the Commission finds it possible to exempt changes to the number of vessels or slots to be operated by an agreement if the originally-filed agreement contains an adequately described range of slots of vessels to be used under the agreement and if the changes fall within that range. 68 FR 67518, December 2, 2003. See also, infra, discussion of 46 CFR 535.704(d). Section 535.408(b)(5) is also revised to adopt the commenters' suggestion to allow changes in vessel substitution or replacement to become effective upon filing, and for clarity removes the phrase, "and there is no significant change in capacity'' thus:

(5) the following operational matters:

(i) port rotations and schedule adjustments; and

(ii) changes in vessel size, number of vessels, or vessel substitution or replacement, if the resulting change is within a capacity range specified in the agreement.

The Commission declines to include in this Final Rule an exemption from the 45-day waiting period for a change in agreement parties due to corporate acquisition as there may be situations in which such a change significantly alters the competitive landscape in a trade. Filing parties are always free to request expedited review for such amendments.

B. Agreement Content—Definition of "Capacity Rationalization''

The Commission received comments from APL and OCCA in response to its proposal to introduce a new term, "capacity rationalization,'' to describe authority that may be contained in some agreements. Inclusion of such authority would prevent an agreement from being eligible for the low market share exemption at section 535.311 and would subject filing parties to certain periodic reporting requirements under the Commission's monitoring program.[2]

OCCA objects not only to the proposed definition of the new term, but also to the removal of the existing definition of "capacity management.'' OCCA at 4. OCCA argues that the proposed definition would include activities of certain "operational'' agreements, such as alliance, cross slot charter, space charter or vessel sharing agreements, that preclude members, under certain expressed conditions, from initiating services independently in the agreement trade. Such restrictions, according to OCCA, have been recognized as legitimate commercial restrictions that are part of the quid pro quo to share space or vessels and serve a valid purpose. OCCA cites, for example, European Commission Regulation 823/2000, Article III(3)(a), *Lektro-Vend Corp.* v. *Vendo Co.*, 660 F.2d 255 (7th Cir. 1981), and *Red Sage Ltd. Partnership* v. *Despa Deutsche*, 254 F.3d 1120 (D.C. Cir. 2001) ("Red Sage'').[3] OCCA contends that the types of restrictions the Commission's proposal would include within the meaning of capacity rationalization are similar to those held valid in Red Sage, and, therefore, do not require closer monitoring.

However, assuming arguendo that the Commission retains the proposed level of monitoring for agreements that contain certain types of restrictions on their members, OCCA proposes that it should nevertheless revise the proposed definition of "capacity rationalization.'' OCCA argues that the proposed definition is too broad and goes beyond the Commission's expressed intent of focusing on restrictions imposed on capacity to be offered outside the terms of a filed agreement. OCCA suggests that the Commission may wish to rewrite the capacity rationalization definition to avoid inadvertently capturing legitimate activities that it believes the Commission should not subject to heightened reporting requirements, such as adjustments in capacity within a range specified in an agreement. OCCA also contends that the definition is unacceptably vague because it includes the term "stabilization,'' which is not itself defined. Id. at 6. OCCA suggests that the Commission replace its definition of capacity rationalization with one that focuses on three specific restrictions. OCCA proposes the following definition:

> *Capacity rationalization* means any agreement between or among two or more ocean common carriers that: (i) Restricts or limits the ability of any or all of those carriers to provide transportation in a trade on vessels other than those utilized under that agreement; (ii) restricts or limits the ability of any or all of those carriers to provide services that are alternate to or in competition with the services provided under that agreement; or (iii) which results in the withholding of vessel capacity on vessels being operated in the trade covered by that agreement. The term does not include adjustments to capacity made by adding or removing vessels or strings of vessels pursuant to and within the authority of sailing agreements, consortia, vessel sharing agreements or space charter agreements.

Id.

We decline to adopt the definition suggested by OCCA, as it would omit some conference and discussion agreements that contain authority for members to discuss and agree upon rationalization of capacity by members in specific trades. In addition, the Commission continues to be of the view expressed in the NPR that the potential effects of such arrangements are heavily dependent on conditions particular to an agreement trade and how the agreement is related to other agreements.

APL notes, without further comment, the OCCA suggestion that the definition be "clarified'' if the Commission elects to adopt the proposed use of the term. APL at 6. APL, however, recognizing the Commission's purpose in the NPR as increasing reporting requirements for agreements with such provisions rather than reducing the carriers' operating flexibility, suggests instead that the Commission refine the reporting requirements rather than the definition. Id. at 6.

In proposing this definition, the Commission's purpose was to identify arrangements that impose restrictions on capacity, and to distinguish those from simple operational exchanges of space. APL correctly assesses the purpose of the definition; the Commission intends to apply a level of monitoring to agreements that address members' participation in the market through manipulation or restriction of the potential supply of vessel capacity in a trade, similar to the level it applies to agreements covering members' pricing activities. It also intends to ensure that agreements containing such authority continue to be accompanied by sufficient information and receive the degree of scrutiny on initial filing that the Commission deems appropriate, without the waiver of the 45-day waiting period and Information Form that would apply based solely on the low market share of such agreements pursuant to section 535.311 and as discussed in this Supplemental Information. However, the Commission concurs with APL's assessment that not all of the heightened degree of ongoing reporting reflected in the proposed rule is necessary for agreements that contain authority that comes within the definition of capacity rationalization. The Final Rule will address that concern by revising the Monitoring Report regulations at section 535.703(c).

Finally, we note that the definition of capacity rationalization as published in the NPR inadvertently included language that was part of the Commission's existing definition of "capacity management.'' The last sentence, which reads, "The term does not include sailing agreements or space charter agreements'' should have been deleted. Consistent with the Commission's intention to apply its rules according to the authority contained in an agreement rather than by "type'' or "class'' of agreement, this language should not have been retained. Therefore, it is deleted from the definition of capacity rationalization in the Final Rule.

C. Transshipment Agreements

The Commission proposed a revision to the definition of a transshipment agreement and a corresponding change to the definition of a nonexclusive

[2] As proposed, the definition changed and replaced the existing definition of "capacity management'' at section 535.104(e) of the Commission's rules as follows:

(e) *Capacity rationalization* means a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service. The term does not include sailing agreements or space charter agreements.

[3] In Red Sage, a covenant not to compete in a lease was held valid.

transshipment agreement.[4] The changes would specify that a publishing carrier perform the transportation on one leg of the transshipment on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement. The proposed changes would recognize the two ways by which an ocean common carrier may provide service: by operating its own vessel or by taking space on another carrier's vessel pursuant to a filed and effective agreement. Comments on the proposed rule came from Trans-Net, PONL, FOML, and OCCA.

Trans-Net, a licensed and bonded non-vessel-operating common carrier from Washington State, was the only commenter in favor of the proposed rule change. Trans-Net conveyed its views via written comments and meetings with individual Commissioners. Trans-Net argues that the change in the definition will provide greater transparency of carrier actions for both shippers and the Commission. Trans-Net at 3–4. At the same time, Trans-Net maintains that the filing of an agreement with the Commission would not be unduly burdensome to the carriers and that the proposed rule accommodates the carriers' desire for flexibility. Trans-Net at 5–7. PONL, FOML, and OCCA, however, disagree with Trans-Net and the Commission in that they do not consider the proposed rule changes either necessary or desirable.

In their comments, PONL and FOML challenge the Commission's "traditional view'' of a transshipment agreement as stated in the supplemental information that accompanied the proposed rule. The Commission's "traditional view'' of a transshipment agreement is an agreement "under which two ocean common carriers that both operate vessels provide a through service between the United States and a foreign port.'' 68 FR 67520–21, December 2, 2003. However, PONL and FOML both challenge this view of a transshipment agreement as lacking legal and factual basis. PONL at 5, FOML at 3. The Commission's traditional view of a transshipment agreement is based mostly on experience in dealing with transshipment agreements filed prior to the current Shipping Act, when carriers participating in transshipment agreements typically operated one of the vessels involved in the transshipment. The optional provisions for nonexclusive transshipment agreements included in the Commission's regulations at section 535.306(d), based on the manner in which transshipments were conducted in 1984, tend to reinforce the Commission's traditional view.

PONL and FOML also assert that there is no basis to the Commission's contention that the definition needs clarification. PONL at 3, FOML at 1. In response, we note that the shipping industry has changed a great deal since 1984, with the increased use of vessel-sharing agreements and service contracts. We also note that Docket 99–10, Ocean Common Carriers Subject to the Shipping Act of 1984, has reduced dramatically the number of transshipment agreements that would now come under the Commission's jurisdiction. While the shipping industry has changed, the definition of a transshipment agreement has not changed, and we are taking this opportunity to update the definition accordingly.

OCCA claims that there is already sufficient transparency because the publishing carrier is required to state the name of the connecting carrier in its tariff (pursuant to the Commission's regulations for nonexclusive transshipment agreements). OCCA at 27. OCCA further maintains that most shippers would be aware of how their cargo is being transported because they have agreed to such service in their service contracts, and even if the shipper were unaware of how its cargo was being transported, the publishing carrier is responsible for the entire movement under its through bill of lading. OCCA at 28. Therefore, OCCA asserts that the rule changes are unnecessary. However, transparency is not the only issue with which the Commission is concerned. As stated earlier, we feel that the definition needs to be updated to reflect more accurately the manner in which transshipments are conducted at the present time.

With regard to the Commission's proposed rule, PONL, FOML, and OCCA are particularly concerned about the inclusion of the language "filed and effective agreement'' in the Commission's proposed rule. They charge that this would create two different meanings for the term "by direct vessel call'' in the definition for a nonexclusive transshipment agreement. OCCA at 28–29, PONL at 8–9, FOML at 5–7. According to PONL, FOML, and OCCA, the Commission's proposed rule would stipulate that a carrier taking space pursuant to a space charter agreement may be considered to make a "direct vessel call'' in the portion of the transshipment between the U.S. port and the transshipment port, but not in the portion of the transshipment between the transshipment port and the foreign port because the publishing carrier would not have a filed and effective agreement to cover that portion of the transshipment.

By including the term "filed and effective agreement'' in the definitions, PONL, FOML, and OCCA assert that the Commission appears to be dictating to carriers how they should structure their operations in the foreign-to-foreign portion of a transshipment, where, OCCA points out, the Commission has no jurisdiction. OCCA at 28–29. OCCA suggests that a publishing carrier that uses space chartered from another carrier in the foreign-to-foreign portion of a transshipment be considered as making a direct vessel call pursuant to the Commission's definition of a transshipment agreement. Id. at 29.

In consideration of those carriers that already participate in filed and effective alliance and vessel-sharing agreements, the Commission included the option of having a filed and effective agreement. It is not the Commission's intent to create a definition for the term "direct vessel call.'' With regard to the concerns expressed by PONL, FOML, and OCCA, we note that a publishing carrier would only be required to have a filed and effective agreement or operate its own vessel on one leg of the transshipment. A publishing carrier that either operates its own vessel or takes space from another carrier pursuant to a filed and effective agreement in the U.S. portion of the transshipment may transport the cargo in the manner that is most advantageous to it commercially in the foreign-to-foreign portion of the transshipment.[5]

[4] § 535.104 Definitions.

(jj) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation and the publishing carrier performs the transportation on one leg of the through transportation on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement.

§ 535.306 Nonexclusive transshipment agreements'exemption.

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier * * *

[5] PONL, FOML, and OCCA point out that in cases where a publishing carrier charters space from other carriers on both portions of a transshipment, the publishing carrier would no longer need a transshipment agreement because it would have two vessel-sharing agreements to cover its service. PONL at 10, FOML at 7, OCCA at 29. The consequence is that the publishing carrier would no longer be required to publish the name of the connecting carrier in its tariff. Given the concerns over national security, PONL, FOML, and OCCA suggest that the Commission may want to reconsider its proposal. However, we find their arguments to be unpersuasive.

OCCA also questions whether agreements that are otherwise exempt from filing, such as an agreement between a parent company and its wholly owned subsidiary, would be required to be filed. Id. Provided that the parent company is an ocean common carrier, it is the Commission's view that the proposed rule would not affect that exemption.

In addition to the arguments expressed above, PONL and FOML contend that the Commission is departing from its view that the publishing carrier may be the carrier serving the foreign-to-foreign portion of a transshipment. PONL at 9, FOML at 6. According to PONL and FOML, under the revised definition a publishing carrier that does not operate a vessel involved in the transshipment would have to be the origin carrier in the export trade of the United States and the destination carrier in the import trade of the United States because of the requirement that the publishing carrier have a filed and effective agreement. We disagree with this assessment on the grounds that pursuant to the Commission's regulations a publishing carrier is only the carrier offering the service. The Commission's regulations do not include the terms "origin carrier'' and "destination carrier'' or seek to dictate whether the publishing carrier should be the carrier serving the port of origin or the carrier serving the port of destination. The regulations refer to the "publishing carrier'' and the "nonpublishing carrier'' or "participating, connecting or feeder carrier.''

PONL and FOML further claim that they would be forced to discontinue many of their current transshipment arrangements because they would not be able to conduct them subject to transshipment agreements. PONL at 9–10, FOML at 7. In response to PONL's and FOML's complaint, we note that PONL and FOML may enter into vessel-sharing agreements that would enable them to continue those arrangements. Furthermore, under the changes outlined above for "low market share'' agreements, those vessel-sharing agreements may become effective upon filing.

III. Information Form and Monitoring Report, 46 CFR Part 535, Subparts E and G

A. Background

The NPR issued by the Commission replaced the current Information Form and Monitoring Report regulations with modified regulations that update the reporting requirements for carrier agreements. The modified regulations account for changes in carrier agreements that have occurred since the Ocean Shipping Reform Act of 1998, Public Law No. 105–258 ("OSRA'') became effective. As such, the Commission seeks to obtain the most relevant and accurate agreement information from carriers for its analysis of agreements under the Shipping Act, without placing an undue regulatory burden on carriers. In addition, the regulations were modified to reduce, where possible, the reporting burden on carriers.

The Information Form and Monitoring Report provide the Commission with essential information on an agreement from the parties to the agreement, and the Commission has consistently found that parties to an agreement are the most reliable source of information on the agreement. *See* Dkt. No. 94–13, Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984, 61 FR 11564, 11565–11566, March 21, 1996. The regulations in subpart E of part 535 require that an Information Form accompany a filed agreement and certain modifications to an existing agreement in effect under the Shipping Act. The Information Form is used in the agreement review process to analyze the probable competitive impact of a filed agreement or an agreement modification. Carrier agreements are initially reviewed upon filing to assess their compliance with the Shipping Act, particularly with respect to section 6(g) and the prohibited acts in section 10. Upon review, the Commission determines whether any action under the Shipping Act is necessary within the 45-day waiting period before an agreement becomes effective.

Once an agreement goes into effect under the Shipping Act, the regulations in subpart G of part 535 require that certain agreements submit ongoing revenue and/or operational data on the parties' activities for as long as the agreement remains in effect. As such, the Monitoring Report enables the Commission to track and analyze the ongoing competitive effects of an agreement after it becomes effective and, accordingly, determine whether any action under the Shipping Act may be necessary. Monitoring Reports also help the Commission to stay informed of agreement activity in the U.S. trades, and to address agreement issues that might arise in connection with investigations, complaints, inquiries, or petitions for Commission action on an agreement.

1. Information Form Regulations

The NPR revised the Information Form regulations by requiring all carrier agreements to submit an Information Form upon filing with the Commission. Specifically, proposed section 535.502(a) requires that all carrier agreements identified in section 535.201(a), except low market share agreements identified in section 535.311, submit an Information Form when the agreement is filed with the Commission. Proposed section 535.502(b) requires an Information Form when a modification to an existing agreement is filed that adds the authority to discuss, or agree on, capacity rationalization, or adds pricing or pooling authority.[6] A modification that expands the geographic scope of an agreement with such authority must also submit an Information Form as required in proposed section 535.502(c). Proposed section 535.504 provides waiver procedures whereby carriers may request relief from any of the Information Form requirements in subpart E of part 535.

2. Information Form

The Commission's proposed rule replaced the format of the Information Form in current sections 535.503 and 535.504 with one form under section 535.503(a) divided into sections I through V, as set forth in appendix A of part 535. Proposed section 535.503(b) requires that agreement parties complete each section of the Information Form applicable to the agreement and the authority contained in the agreement. Sections I and V apply to all carrier agreements subject to the Information Form requirements. Sections II, III and IV apply based on the authority contained in the agreement.

a. Section I

Section I of the Information Form applies to all carrier agreements subject to the Information Form requirements as identified in section 535.502(a) of the proposed rule. Parties to such agreements must complete parts 1 through 4 of section I with information on the following topics: the name of the agreement, narrative statements on the

[6] For ease of reference, the term "pricing or pooling authority'' is used herein to identify agreements containing any of the following authorities: (1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (2) the establishment of a joint service; (3) the pooling or division of traffic, earnings, or revenues and/or losses; (4) the discussion or exchange of data on vessel-operating costs; or (5) the discussion of service contract matters. These authorities were listed in the NPR. 68 FR 67541, December 2, 2003.

purpose of and commercial circumstances for the agreement, a list of the parties' other agreement participation within the geographic scope of the filed agreement, and the identification of the authorities and provisions contained in the agreement.

b. Section II

Section II of the Information Form applies to carrier agreements that contain simple operational authority including vessel space charter, and sailing or service rationalization arrangements. This authority does not include the establishment of a joint service as defined in section 535.104(o), or capacity rationalization as defined in section 535.104(e), of the proposed rule. Parties to such agreements must complete all items in part 1 of section II with information on their vessel calls at ports along with a narrative statement on any changes in port service that are anticipated or planned to occur when the agreement goes into effect.

c. Section III

Section III of the Information Form applies to carrier agreements with the authority to discuss, or agree on, capacity rationalization as defined in section 535.104(e) of the proposed rule. Parties to such agreements must complete parts 1 through 3 of section III with information on their vessel capacity and capacity utilization, their vessel calls at ports, and a narrative statement on any anticipated or planned changes in their vessel capacity and/or liner services (including ports) that would be implemented under the agreement when it goes into effect.

d. Section IV

Section IV of the Information Form applies to carrier agreements with pricing or pooling authority. Section 535.503(b)(4) of the proposed rule specifically identifies these authorities as: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; or (e) the discussion of, or agreement on, any service contract matter.

Parties to agreements with any of these authorities must complete parts 1 through 5 of section IV with information on the following topics: market share, total average revenue, cargo volume and revenue results for the top 10 agreement-wide commodities, vessel capacity and capacity utilization, and port service. The agreement parties must also provide narrative statements on any changes in their vessel capacity or port service that are anticipated or planned to occur when the agreement goes into effect. Changes in vessel capacity are qualified to mean "significant changes in the amounts of vessel capacity,'' as defined in part 4(C) of section IV.

e. Section V

Section V requires that parties to all subject agreements identify contact persons for the Information Form and the agreement, and that the Information Form be certified and signed by a representative of the parties.

3. Monitoring Report Regulations

The proposed rule modified the Monitoring Report regulations to require reporting only from parties to agreements with certain authority. For agreements that contain pricing or pooling authority,[7] the proposed rule limited the application of the regulations to include only those agreements with a combined market share of 35 percent or more.[8] Specifically, proposed section 535.702(a) requires Monitoring Reports from agreements with pricing or pooling authority where the parties to such agreements hold a combined market share of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement.[9] It also requires Monitoring Reports from all agreements with the authority to discuss, or agree on, capacity rationalization. At the time of the NPR, the Commission estimated that 63 agreements would be subject to the modified Monitoring Report regulations; this would be a reduction from 213 agreements.[10]

For exceptional agreements, proposed section 535.702(c) provides that the Commission may, as necessary, require Monitoring Reports from an agreement with pricing or pooling authority with a market share below the 35 percent threshold.[11] Further, section 535.702(d) clarifies the Commission's authority by providing that in addition to or instead of the Monitoring Report, the Commission may, as necessary, prescribe alternative periodic reporting requirements on parties to any agreement subject to section 535.201.[12] As with the Information Form regulations, proposed section 535.705 provides waiver procedures whereby carriers may request relief from any of the reporting requirements in subpart G of part 535.

4. Monitoring Report Form

The proposed rule replaced the format of the Monitoring Report in current sections 535.703, 535.704, and 535.705 with one form in proposed section 535.703(a) divided into sections I through III, as set forth in appendix B of part 535. Section 535.703(b) of the proposed rule requires that parties to an agreement complete each section of the Monitoring Report applicable to the agreement and the authority contained in the agreement. Sections I and II apply based on the authority contained in the agreement, and section III applies to all agreements required to submit

[7] "Pricing or pooling authority'' as referred to in the Monitoring Report regulations is identical to the use of the term in the Information Form regulations; *i.e.*, it refers to any of the following authorities: (1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (2) the establishment of a joint service; (3) the pooling or division of cargoes, earnings, or revenues and/or losses; (4) the discussion or exchange of data on vessel-operating costs; or (5) the discussion of service contract matters. 68 FR 67544, December 2, 2003.

[8] The Commission's market share threshold of 35 percent for monitoring pricing or pooling agreements is analogous to the Horizontal Merger Guidelines issued jointly by the U.S. Department of Justice and the Federal Trade Commission in 1992. *1992 Horizontal Merger Guidelines* ("1992 Guidelines''), 57 FR 41552, Sept. 10, 1992. In analyzing horizontal mergers between firms, the 1992 Guidelines set forth economic standards that the agencies use to apply antitrust law. Accordingly, the agencies find that:

[w]here the merging firms have a combined market share of at least thirty-five percent, merged firms may find it profitable to raise price and reduce joint output below the sum of their premerger outputs because the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales.

57 FR 41561, Sept. 10, 1992.

[9] Under section 535.703(b) of the proposed rule, the Commission's Director of BTA will determine the Monitoring Report obligations of agreements with pricing or pooling authority using the 35 percent market share threshold. For newly filed agreements, this will be based on the market share data from the Information Form submitted with the agreement. Thereafter, at the beginning of each calendar year, BTA will notify such agreements of any change in their reporting obligations based on the market share data from their Monitoring Reports for the previous second calendar quarter (April–June).

[10] Since the NPR was published, some carrier agreements on file at the Commission have been canceled. The Commission now estimates that a total of 57 agreements will be subject to the Monitoring Report regulations under the Final Rule.

[11] These cases may occur when a pricing or pooling agreement with a market share below 35 percent constitutes the major rate agreement in a trade, or poses unique anti-competitive or statutory concerns that require close monitoring. The proposed rule delegates the Commission's authority under section 535.702(c) to the Director of BTA in section 501.26(o).

[12] The Commission may find it necessary to prescribe alternative reporting requirements when an agreement contains unique authority, the effects of which may require monitoring, that is not captured under the standard Monitoring Report. The Commission's authority under section 535.702(d) is delegated to the Director of BTA in section 501.26(o).

Monitoring Reports under proposed section 535.702(a).

a. Section I

Section I of the Monitoring Report applies to all agreements with the authority to discuss, or agree on, capacity rationalization, as defined in section 535.104(e) of the proposed rule. Parties to such agreements must complete parts 1 through 3 of section I with quarterly information on their vessel capacity and capacity utilization. In addition, proposed section 535.703(c), as set forth in part 3 of section I, requires that a narrative statement of any changes in vessel capacity and/or liner services (including ports) that the parties plan to implement under the agreement be submitted to the Commission's Director of BTA no later than 15 days after a change has been agreed upon by the parties but prior to the implementation of the change.

b. Section II

As proposed, section II of the Monitoring Report applies to agreements in which the parties hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; or (e) the discussion of, or agreement on, any service contract matter.

Parties to such agreements must complete parts 1 through 6 of section II with the following quarterly information: Market share, total average revenue, cargo volume and revenue results on the top 10 agreement-wide commodities, vessel capacity and capacity utilization, and narrative statements on any significant changes that occurred in vessel capacity and service at ports. The meaning of significant changes for these items is qualified in parts 5(C) and 6 of section II. The proposed rule substantially reduced the reporting burden for major agreement commodities by requiring parties to report their data on an agreement-wide basis, instead of a sub-trade basis.[13] For exceptional agreements, however, section 535.703(d) of the proposed rule provides that the Commission may, in its discretion, require sub-trade commodity data from agreements subject to section II of the Monitoring Report.[14]

c. Section III

Section III requires that parties to all subject agreements identify a contact person for the Monitoring Report, and that the Monitoring Report be certified and signed by a representative for the parties.

B. Summary of Comments and Discussion

Comments directly addressing the Information Form and Monitoring Report regulations of the proposed rule were submitted by OCCA and APL. As noted above, OCCA represents most of the conference and rate discussion agreements and their members in the U.S. trades. As a member of OCCA, APL endorses OCCA's comments on the proposed rule. APL at 1. However, APL also submitted separate comments as a supplement to OCCA's comments to elaborate on particular aspects of the proposed rule. Id. Summaries of the issues raised by the commenters as they pertain to the Information Form and Monitoring Report regulations proposed in the NPR are provided below with the Commission's discussion on each issue.

OCCA expressed its view that since OSRA became effective, the current Information Form and Monitoring Report regulations for carrier agreements are unduly burdensome and unnecessary given: (1) The extensive use of individual service contracts in the shipment of cargo, (2) the confidentiality of service contract terms, and (3) the reduction in the number of conference agreements in the U.S. trades. OCCA at 16–17. Overall, OCCA recognizes the Commission's efforts to reduce the current reporting burden on carriers and supports most of the proposed changes pertaining to the Information Form and Monitoring Report regulations. Id. at 17. Nonetheless, OCCA raises the following issues and recommendations that would in its view further improve the rule. Id.

1. Reporting Requirements for Agreements With Capacity Rationalization Authority

OCCA objects to the heightened reporting requirements on agreements that authorize capacity rationalization, as the term is defined in section 535.104(e) of the proposed rule. Id. at 5. OCCA interprets the meaning of capacity rationalization to include certain types of agreements, based upon its reading of the supplementary information of the NPR. Id. at 4. These are: (1) An agreement that prohibits or restricts the introduction of vessels into the agreement trade in a service other than that operated under the agreement; (2) an agreement that prohibits or restricts the use of space on non-agreement vessels in the agreement trade by an agreement party; and (3) an agreement that results in an artificial withholding of vessel capacity. Id. OCCA argues that operational agreements with restrictive provisions on its members' activities within the agreement trade are legitimate, understandable, and serve a valid purpose. Id. at 5. OCCA's objections to the new term "capacity rationalization'' and its suggestions for changes to the definition, as well as our response to OCCA's suggestions, are addressed earlier, in Part II(B) of the Supplemental Information.

On a related issue, OCCA recommends that the Commission delete the term "discussion of'' when identifying agreement modifications that add capacity rationalization authority in section 535.502(b)(2).[15] Id. at 15. OCCA argues that an agreement modification to discuss capacity rationalization does not require an Information Form because such authority does not permit the parties to engage in any capacity rationalization. Id. OCCA believes that an Information Form would only be necessary when an agreement modification is filed that permits the parties to engage in capacity rationalization, and thus, it finds section 535.502(b)(2) of the proposed rule, as it presently reads, to be unnecessarily duplicative and burdensome. Id.

OCCA also opposes proposed section 535.703(c), as set forth in part 3 of section I of the Monitoring Report, that requires parties to an agreement authorizing capacity rationalization to report to the Commission their planned vessel capacity and/or liner service

[13] The former regulations required that parties to certain agreements, categorized as Class A, report their cargo volume and revenue results for each major agreement commodity in each sub-trade within the geographic scope of the agreement. For purposes of reporting, sub-trade is defined to mean all liner movements between each U.S. port range and each foreign country within the scope of the agreement.

[14] Sub-trade commodity data may be necessary when an agreement with extremely high market share covers a broad trade area comprised of distinct sub-trades or regions, and establishes rates distinctly by sub-trade or region. In addition, such data may be necessary where unique anti-competitive concerns are present, or where competitive issues exist that affect pricing for certain commodities. Proposed section 501.26(p) would delegate this authority to the Director of BTA.

[15] Section 535.502(b)(2) of the proposed rule reads as, "The discussion of, or agreement on, capacity rationalization.''

changes prior to implementation.[16] Id. at 19. OCCA recommends that the Commission delete section 535.703(c) and part 3 of section I of the Monitoring Report. Id. It argues that a requirement to provide advance notice is not synchronous with the Monitoring Report, which must be submitted on a historical quarterly basis. Id. at 19–20. It also notes that major agreements of this nature publicly announce their vessel capacity changes. Id. at 20.

OCCA further believes the advance notice requirement to be unnecessary and duplicative because the rule requires vessel capacity data from many agreements in their quarterly Monitoring Reports. Id. Moreover, it argues that advance notice of capacity changes serves no legitimate regulatory purpose because carriers may lawfully act in concert to reduce capacity under the authority of a filed agreement, *e.g.*, the authority to operate a number of vessels within a specified range. Id.

In its supplemental comments, APL endorses OCCA's position to delete the advance notice requirement in section 535.703(c) of the proposed rule, and part 3 of section I of the Monitoring Report, for agreements authorizing capacity rationalization. APL at 6. As an alternative, however, APL suggests that the Commission limit the advance notice requirement to cover only concerted actions that reduce the total vessel capacity of such agreements. Id. at 6–7. It notes that increases in vessel capacity could be adequately reported on a quarterly basis in the regular Monitoring Report. Id. at 7. Further, APL suggests that the Commission qualify the meaning of vessel capacity and/or liner service changes to exclude temporary or minor changes that have little or no impact, regardless of whether reported in advance or on a historical quarterly basis. Id. APL finds the prospect of reporting such temporary or minor changes to be unduly burdensome and of no useful regulatory purpose. Id.

For the reasons discussed above in Part II of the Supplementary Information, we are not adopting OCCA's suggested definition of capacity rationalization. We are retaining the definition in proposed section 535.104(e), with the last sentence deleted in the Final Rule. This section addresses the reporting requirements for agreements that authorize capacity rationalization.

Based on its reading of the Supplementary Information in the NPR, OCCA interprets the intention of the reporting requirements for agreements authorizing capacity rationalization as primarily limited to certain types of operational agreements with restrictive provisions on their members' activities in the agreement trade. OCCA's interpretation is not entirely accurate. We addressed operational agreements in the Supplementary Information of the NPR to distinguish and illustrate some of the agreements that are included in the definition of capacity rationalization. Specifically, we determined that operational agreements included in the definition of capacity rationalization are those that affect the supply of vessel capacity in a trade or market and prohibit or place conditions on its members' independent agreement participation with other carriers and/or competing liner services outside of the agreement within the agreement trade. We discussed these agreements to distinguish them from simple operational agreements, which do not place such restrictions on their members, so that the agreement filing and reporting regulations would be understood and applied correctly. In focusing our discussion on operational agreements, it was not our intention to imply that the reporting requirements for agreements authorizing capacity rationalization are limited to certain types of agreements.

The proposed rule explicitly eliminated the identification of agreements by type or class in the Information Form and Monitoring Report regulations. The current regulations, which identify carrier agreements by type or class for the purpose of assigning reporting requirements, have become outdated and inadequate in relation to the changes that have occurred in carrier agreements and their increasingly complex authorities, as was explained in the Supplementary Information to the NPR:

> The current agreement classification regulations in section 535.502 provide procedures for assigning specific reporting requirements to specific types of agreements. Agreements filed at the Commission, however, have evolved since the current classification regulations were implemented, especially under OSRA. Now, multiple or complex forms of authority may be contained in a single agreement that might not neatly fall under one specific agreement type or class. Further, the reporting requirements assigned to a particular type or class of agreement may not adequately address the full authority of the agreement. For instance, the current reporting requirements for Class C agreements do not distinguish between simple operational agreements, such as vessel space charter arrangements, and the more complex and anticompetitive operational agreements with capacity rationalization authority that include global alliance arrangements.

68 FR 67525, December 2, 2003.

To address these concerns, the proposed rule modified the regulations to assign reporting requirements to specific authorities contained in agreements. In this regard, we stated that:

> While no rule can cover all circumstances, the Commission believes that this approach would more directly address the elements of concern within the agreement, *i.e.*, the parties' authority and the concerted activities they may pursue with such authority.

Id.

The Information Form and Monitoring Report regulations in the proposed rule provide that any agreement authorizing the discussion of, or agreement on, capacity rationalization is subject to the reporting requirements. The regulations include all carrier agreements with such authority, regardless of agreement type. In addition to operational agreements with capacity rationalization authority, there are a number of conference and rate discussion agreements with authority to discuss, or agree on, capacity rationalization. Such agreements will be subject to the reporting requirements for capacity rationalization authority in addition to all other reporting requirements applicable to their pricing or pooling authority under this Final Rule.[17]

In assigning reporting requirements to capacity rationalization authority, the Commission is intentionally increasing the level of its analysis and monitoring of the concerted actions that are planned or implemented by carriers under this authority of their agreements. We believe this increase in reporting is reasonable, judicious, and proportional to the increasing prevalence and use of capacity rationalization authority occurring in agreements between or among carriers in the U.S. trades. The Commission views these reporting requirements as a necessary measure within its authority under section 5(a) and based on its statutory

[16] For an agreement that authorizes capacity rationalization, section 535.703(c), as set forth in part 3 of section I of the Monitoring Report, requires a narrative statement of any planned changes in the vessel capacity and/or liner services that the parties will implement under the agreement. This statement shall be submitted to the Director, BTA, no later than 15 days after a vessel capacity and/or liner service change has been agreed upon by the parties but prior to the implementation of the actual change under the agreement.

[17] The instructions in appendices A and B to part 535 provide that where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of the Information Form or Monitoring Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed.

responsibilities under the Shipping Act, particularly with respect to the section 6(g) standard for agreements. 46 U.S.C. app. 1704(a) and 1705(g).

By promulgating reporting requirements for capacity rationalization authority, the Commission does not dispute, as OCCA argues, the legitimacy of such authority in agreements. Further, we do not dispute the lawfulness of carriers to act in concert under such authority within the standards of the Shipping Act. In the Supplementary Information to the NPR, we acknowledged that operational agreements, even those with capacity rationalization authority, can achieve efficiencies in a trade or market by lowering operational costs and even enhancing ocean liner services to the benefit of the shipping public. Id. at 67524. The efficiencies associated with capacity rationalization authority in conference or rate discussion agreements, however, are less apparent and would seem to be aimed at achieving the rate objectives of the agreement. Further, in the NPR, we cautioned that a concerted reduction in vessel capacity and the restrictions imposed by capacity rationalization authority can result in a shortage of vessel space in a trade leading to an unreasonable decrease in service. Id. A concerted reduction in vessel capacity can also produce an artificially-induced upward pressure on rate levels, potentially leading to an unreasonable increase in rates in violation of section 6(g). Id.

The reporting requirements for agreements authorizing capacity rationalization should not be viewed in any way as a punitive measure against such agreements. Rather, the purpose of the reporting requirements is to provide the Commission with necessary information to gauge the reasonableness of the parties' actions under such authority in accordance with the standards of the Shipping Act, and within the prevailing market conditions of the agreement trade.

We do not believe that reporting vessel capacity information places any undue regulatory burden on carriers because carriers engaged in capacity rationalization have such information readily available. Moreover, the Final Rule provides regulations that allow carriers to request a waiver, with a showing of good cause, from any of the Information Form and Monitoring Report requirements. Accordingly, in conjunction with the definition in section 535.104(e) of the Final Rule, all agreements identified in sections 535.502 and 535.702(a) that authorize the discussion of, or agreement on, capacity rationalization are subject to the applicable reporting requirements in subparts E and G of the Final Rule, as modified below.

With respect to section 535.502(b)(2) of the proposed rule, the Commission rejects OCCA's recommendation to delete the term "discussion of'' for agreement modifications that add capacity rationalization authority. The term accurately reflects the intention of the Commission's reporting requirements. We view the "discussion of'' capacity rationalization as potentially anti-competitive, especially within conference and rate discussion agreements, similar to the anti-competitive authority to discuss pricing information.

Adding authority for the discussion of capacity rationalization, or the discussion of pricing information, to an existing agreement alters the competitive composition of the agreement, and the agreement must be re-examined with a new Information Form. Absent such a reporting requirement, the Commission would have to request vessel capacity information from parties to an agreement modification authorizing the discussion of capacity rationalization after the modification was filed, which could delay the effective date. Further, deleting the term "discussion of'' for agreement modifications would conflict with the reporting requirements for newly filed agreements, which require information on the authority to discuss, or agree on, capacity rationalization. The Commission believes that authority to discuss capacity rationalization would not be any less anti-competitive based solely on it being filed as a modification to an existing agreement than it would be if filed in a new agreement.

On the issue of proposed section 535.703(c), and part 3 of section I of the Monitoring Report, the Commission does not agree with OCCA's recommendation to delete the reporting requirement for notice to the Commission of planned vessel capacity and/or liner service changes prior to implementation from parties to agreements authorizing capacity rationalization. OCCA incorrectly infers that the reporting requirement is an unnecessary imposition by the Commission that ignores or negates the legality of carriers to act within the authority of their agreements. As previously stressed, we do not dispute the lawfulness of carriers to act in concert under the authority of their agreements within the reasonable standards of the Shipping Act.

The reporting requirement is a judicious regulatory measure that enables the Commission to gauge the reasonableness of a pending action that the parties plan to implement under the authority of their agreement. With such reporting, the Commission can receive timely notice to take any necessary action under the Shipping Act to prevent a concerted action by carriers that would likely cause harm in the agreement trade prior to its implementation.

To make this determination, the Commission must first be informed in advance of the parties' pending action under the agreement. The Commission must also be able to weigh the severity of such action within the prevailing market conditions of the agreement trade. While an agreement may specify a range of vessel capacity within which the parties intend to operate, this range of vessel capacity may be broad spanning multiple trade lanes and liner services under the geographic scope of the agreement, especially in cases where the geographic scope covers all the U.S. trades. Moreover, market conditions in the agreement trade might have substantially changed from the time when the Commission initially analyzed the likely competitive impact of the agreement upon filing. Therefore, accurate and current information on the likely effects of a pending action under an agreement is required directly from the parties to the agreement. In accordance with the jurisdictional authority of the Commission governing agreements in effect under the Shipping Act, we find it both prudent and necessary to retain section 535.703(c) in the Final Rule for notice prior to implementation of pending actions planned by parties to agreements authorizing capacity rationalization.

We do not believe that this reporting requirement places any undue regulatory burden on carriers. As OCCA noted, parties to agreements often publish this information. Therefore, we believe that they can easily and readily submit the required information to the Commission. We do, however, concur with the alternative modifications suggested by APL for this reporting requirement.

APL correctly discerns that the underlying intention of the Commission for this reporting requirement focuses on receiving advance notice of concertedly planned reductions in vessel capacity that might potentially violate the standards of reasonableness under the Shipping Act. Further, as APL surmises, it is our intention that such reporting be limited to reductions in vessel capacity that would be

significant. Such a qualification includes reductions in vessel capacity that are strategically planned to be implemented for a period of time, or intended to be more permanent in nature. It excludes incidental alterations in vessel capacity that would be temporary in nature, or operational changes in vessel capacity that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. In addition, it is our intention that all reporting requirements set forth in appendices A and B of part 535 for similar information on changes in vessel capacity, or vessel calls at ports, be limited and qualified for reporting purposes to mean significant changes.

Therefore, section 535.703(c) has been modified in the Final Rule to require notice prior to implementation of any significant reductions in vessel capacity under the agreement. Part 3 of section I of the Monitoring Report in the proposed rule has been modified and parts 2(C) and 2(D) of section I have been added in the Final Rule. Part 2(C) of section I sets forth instructions on reporting significant reductions in vessel capacity prior to implementation. Part 2(D) of section I sets forth instructions on reporting other significant changes in vessel capacity for the preceding calendar quarter. Part 3 of section I of the Monitoring Report in the Final Rule has been modified and now sets forth instructions on reporting significant changes in vessel calls at ports for the preceding calendar quarter. In a similar manner, all other reporting requirements in appendices A and B of part 535 in the Final Rule have been modified and qualified for reporting purposes to mean significant changes in vessel capacity, or vessel calls at ports.

2. Reporting Requirements for Agreements With Authority To Discuss or Exchange Vessel-Operating Cost Data

OCCA objects to the heightened reporting requirements on agreements that contain the authority to discuss or exchange data on vessel-operating costs. OCCA at 7. OCCA notes that reporting on such authority was first adopted by the Commission in its rulemaking in *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*, FMC Docket No. 94–31, which established the current Information Form and Monitoring Report regulations. *Id.* It argues that the Commission's initial rationale for assigning heightened reporting requirements to such authority was, and continues to be, questionable from both a legal and a practical perspective. Id. at 7–8.

Specifically, OCCA refers to the Commission's application of Supreme Court cases,[18] where the Commission stated that "the sharing of pricing information can have a significant impact on price competition.'' [19] Id. at 7. It argues that these Supreme Court cases involved the sharing of price information rather than cost information, and therefore, it questions the validity of the Commission's previous legal analysis in FMC Docket No. 94–31. Id. at 7–8. OCCA further cites case law where it was found that the sharing of cost information by competing manufacturers was lawful because it improved efficiency and lowered costs.[20] Id. at 8.

From a practical perspective, OCCA argues that the authority to discuss or exchange vessel-operating cost data has no meaningful impact on pricing because carriers price based on total costs, in addition to market conditions, and vessel-operating costs are only a portion of total costs. Id. Moreover, OCCA points out that most vessel-operating cost data is publicly available information and can be readily obtained or discerned regardless of whether carriers are authorized to share such data. Id. at 8–9. Further, OCCA believes that heightened reporting requirements on such authority creates an excessive burden for carriers that obstructs efficiency because carriers generally discuss or exchange such data within their vessel-sharing agreements, which promote cost-effective services. Id. at 9. For these reasons, it recommends that the Commission delete all references to such authority from the rule, including the Information Form and Monitoring Report.[21] Id.

The Commission disagrees that its legal or economic rationale in FMC Docket No. 94–31 was misguided, as OCCA argues. The Commission considers the "sharing of pricing information'' between parties to an agreement, which affects price competition in a market, to include the authority to discuss or exchange cost information. In the case of the ocean shipping industry, such information includes vessel-operating cost data.

We recognize, however, that it is unnecessarily redundant to subject such authority to reporting requirements where vessel-operating cost data is shared by carriers for pricing purposes in agreements. Agreements that contain authority to discuss, or agree upon, pricing are already subject to the reporting requirements. Further, we agree that the authority to share vessel-operating cost data in agreements that do not contain pricing authority, such as a vessel-sharing agreement, is for operational purposes.

It is not our intention in this rule to subject such an agreement to a level of reporting on par with agreements containing potentially highly anti-competitive authorities when such reporting is not necessary or required. Therefore, the reference to the authority to discuss or exchange data on vessel-operating costs has been deleted from sections 535.502, 535.503, 535.702, and appendices A and B of part 535 of the Final Rule. The definition of vessel-operating costs, however, has been retained in section 535.104(kk) in the Final Rule for any future reference that may be necessary in 46 CFR part 535.

3. Section I of the Information Form in Appendix A of Part 535

OCCA recommends that the Commission delete parts 2, 4(D), and 4(J) of section I of the Information Form in the proposed appendix A.[22] Id. at 18. In general, OCCA views these reporting requirements as unnecessary, duplicative, and burdensome. Id. at 19. It notes that information on these matters can instead be obtained from the content of the agreement itself. Id. It further argues that these proposed requirements neither serve a legitimate regulatory purpose, nor advance the Commission's analysis of agreements with respect to the section 6(g) standards of the Shipping Act. Id. at 18–19.

The Commission declines to adopt OCCA's recommendation to delete parts 2(A) and 2(B) of section I of the Information Form that require narrative statements elaborating on the purpose and commercial aspects of an agreement between or among carriers filed at the Commission. We disagree with OCCA's arguments that such information has no regulatory purpose nor advances the

[18] *Sugar Institute, Inc.* v. *United States*, 297 U.S. 553 (1936), and *American Column & Lumber Co.* v. *United States*, 257 U.S. 377 (1921).

[19] *See* Docket No. 94–31, 59 FR 62372, 62376, December 5, 1994.

[20] *United States* v. *National Malleable Steel & Castings Co.*, 1957 Trade Cas. (CCH) ¶68,890 (N.D. Ohio 1957) *aff'd per curiam* 358 U.S. 38 (1958).

[21] These references are cited as proposed sections 535.104(kk), 535.502(b)(v), 535.503(b)(iv), 535.702(a)(2)(iv), and 535.704(a)(1).

[22] Part 2 of section I requires that the parties provide narrative statements on the purpose of, and the commercial circumstances for, the filed agreement. Part 4(D) of section I requires the parties to identify whether the agreement authorizes the parties to discuss or exchange vessel-operating cost data. Part 4(J) of section I requires the parties to identify any other authority contained in the agreement that is not otherwise covered in part 4 of section I of the Information Form.

Commission's analysis of agreements under section 6(g). In the Supplementary Information of the NPR, we explained that:

> Section I [of the Information Form] requires carriers to supply relevant agreement information to the Commission at the start of the review process. This information would be used in the initial review and analysis of an agreement, and would help to avoid formal requests for additional information which delay the effective date of the agreement.

68 FR 67525, December 2, 2003.

With respect to part 2 of section I, we further explained that this specific information provides the Commission with a clearer understanding of the parties' collective objectives under the agreement in relation to their services within the agreement trade. Id. at 67526. We noted that such information would be relevant to the Commission's review of the agreement, but might not be readily apparent by the terms of the agreement without seeking additional information from the parties. Id.

The statutes and regulations governing the filing of agreements under the Shipping Act only require that conference agreements contain a statement of purpose. For other agreements, it is at the discretion of the parties as to whether a statement of purpose is contained in the filed agreement. As such, the Commission cannot always rely on the content of agreements to disclose such information. The Commission has a vast amount of experience in reviewing and analyzing agreement filings under the Shipping Act. Accordingly, we have found that agreements filed at the Commission are generally crafted to meet the legal requirements of the Shipping Act, and very little additional information elaborating on the purpose or commercial aspects of an agreement accompanies the agreement filing. As previously noted, the authority of the Commission to promulgate rules on the form and manner of filed agreements and any additional information and documents that need to accompany the agreement filings is set forth in section 5(a) of the Shipping Act.

In some instances, parties to an agreement publish relevant information on the purpose and/or commercial circumstances pertaining to the agreement. The Commission uses any published information that is available to gain a clearer understanding of an agreement for its analysis. However, we find it wholly inadequate and inefficient that the receipt of relevant information useful to the Commission's review and analysis of an agreement may be dependent upon whether the parties choose to publish information, and limited to whatever sort of information they may choose to publish about the agreement. Instead, we believe that the relevant and straightforward agreement information required in part 2 of section I of the Information Form can be easily and readily submitted by the parties at the time that the agreement is first filed at the Commission.

When questions arise about an agreement that cannot be addressed by the content of the agreement or any published information, the Commission can request additional information from the parties, which could delay the effective date of the agreement. Part 2 of section I provides carriers with the opportunity to avoid requests for additional information on their agreements, and it is in their best interest to respond accordingly with meaningful agreement information that fully addresses this reporting requirement.

We do, however, see a need to modify this part of the Information Form. We believe that the purpose and commercial aspects of an agreement are interrelated and may more easily be addressed in a single narrative statement. Therefore, parts 2(A) and 2(B) have been consolidated into a requirement for one narrative statement in part 2 of section I of the Information Form in appendix A of part 535 of the Final Rule.

Regarding OCCA's issues with the other parts of section I of the Information Form, part 4(D) on the authority to discuss or exchange data on vessel-operating costs has been deleted from the Final Rule for the reasons previously stated. Further, we agree that agreements filed under the Shipping Act must comply with 46 CFR 535.402, and thus, part 4(J) of section I of the Information Form is unnecessary and has been deleted from the Final Rule because the complete and specific authorities between the parties can be obtained from the content of the agreement.

4. Reporting Requirements on the Cargo Volume and Revenue Results for the Top 10 Agreement-Wide Commodities

OCCA strongly urges the Commission to eliminate all reporting requirements for cargo volume and revenue data on agreement commodities.[23] OCCA at 17. It stresses that eliminating such reporting is the "single most significant change'' the Commission could make to reduce the current burden on the industry. Id. OCCA believes that the modification in the proposed rule that reduces reporting to the top 10 agreement-wide commodities still imposes a significant burden because carriers generally do not track revenue on a per-commodity basis. Id. It questions the value of this data given the wide use of confidential service contracts, where many such contracts apply a single rate for multiple commodities, such as a rate for General Department Store Merchandise, or Freight All Kinds. Id. It further questions whether fluctuations in this data for a particular carrier can be directly attributed to an agreement action, or to numerous other factors external to the agreement. Id. at 18. It argues that even if this data is of some use to the Commission, the burden of continually reporting such data outweighs its usefulness. Id. As an alternative, OCCA suggests that the Commission could require this data on an "as needed'' basis to address specific issues or concerns for a particular agreement. Id.

In the Supplementary Information of the NPR, the Commission acknowledged that since OSRA became effective, collective pricing under conference agreements has declined in favor of voluntary rate authority under discussion agreements. 68 FR 67524, December 2, 2003. Nevertheless, we stated that although coordination is voluntary, discussion agreements contain considerable and broad authority to influence tariff rates, service contract rates, and other service matters spanning large geographic areas in the U.S. trades. Id. We explained that:

> OSRA prohibited any mandatory restrictions on individual service contracts, but it allowed agreements to adopt voluntary service contract guidelines on their parties' individual contracts. On a voluntary basis, carriers may collectively set and adhere to rates and terms for their individual service contracts. Thus, while agreement carriers are pricing more independently under OSRA, they still have the power to exert their collective influence over contract rates and terms.

Id.

For this reason, the Commission declines to adopt OCCA's recommendation to eliminate part 3 of section IV of the Information Form (appendix A of part 535) and part 4 of section II of the Monitoring Report

[23] The former Information Form for Class A/B agreements and Monitoring Report for Class A agreements require each party to report its cargo volume and revenue results for each major commodity for each sub-trade within the geographic scope of the agreement. The Commission retained these requirements in the proposed rule, but reduced the amount of reporting to each party's cargo volume and revenue results on only the top 10 agreement-wide commodities.

(appendix B of part 535) that require reporting on each party's cargo volume and revenue results on the top 10 agreement-wide commodities for agreements that contain pricing or pooling[24] authority.

A review of the voluntary service contract guidelines filed with the Commission indicates that parties to most major agreements with pricing authority, whether a conference or a discussion agreement, collectively set guidelines on rate levels and/or rate increases for specific commodities. Parties to such agreements may use and adhere to the commodity rate guidelines in their individual service contracts. As such, agreements with authority to affect pricing, even with the changes that have occurred under OSRA, can and do affect commodity-specific freight rates in the ocean transportation of cargo moving under the individual service contracts of their members.

As stressed throughout this rule, the Commission is assigned the responsibility of overseeing and regulating the concerted behavior of ocean common carriers that, but for the Shipping Act, would otherwise be subject to the antitrust laws. 49 U.S.C. app. 1706. To carry out its statutory duty, the Commission must assess the competitive effects of the concerted behavior of agreement parties on the ocean carriage of cargo in the foreign commerce of the United States. Where parties to an agreement have authority to affect cargo freight rates and charges collectively, reporting requirements for specific information pertaining to such potentially anti-competitive authority is necessary for the Commission to gauge the reasonableness of the parties' behavior in accordance with the standards of the Shipping Act.

It is our view that in most major agreements with pricing authority the parties set freight rates for specific commodities, whether in tariffs or in service contracts, and adopt voluntary service contract guidelines that can affect the cargo freight rates of specific commodities. To regulate this behavior properly, it remains necessary for the Commission to receive some commodity-specific information directly from parties to agreements with authority that may affect pricing.

As such, we disagree with OCCA's arguments regarding the value and usefulness of the commodity specific data collected under the Commission's reporting requirements. This information provides the Commission with meaningful insight on the trends in, and the direction of, pricing under agreements for major commodity movements in the U.S. trades. By examining these data trends for an agreement, the Commission can more accurately gauge the competitive effects of the concerted pricing behavior of the parties in the agreement trade. The ability of the Commission to analyze pricing under an agreement is especially important in cases where the combined market share of the parties is inordinately high, which gives them considerable market power to affect pricing.[25]

The commodity information from the reporting requirements is also used by the Commission for guidance in addressing inquiries, complaints, and petitions for Commission action on an agreement in cases where such issues involve specific commodities. Issues on the pricing behavior of agreement parties continue to be brought before the Commission under OSRA.

We recognize the problems and burden for carriers associated with the former reporting requirements for agreement commodity data. Consequently, we modified these requirements by adding definitions and qualifications with better instructions in the proposed rule to assist carriers in preparing their data, and to improve the consistency and accuracy of the data reported to the Commission. We further substantially reduced the amount of required commodity data to ease the reporting burden on carriers.

We believe that the modified reporting requirements for the commodity data in the proposed rule represent a fair and reasonable compromise for carriers, and are compatible with the changes that have occurred in agreements under ORSA. Further, we believe that most major carriers maintain records of some form on their cargo volume and revenue results by commodity in the agreement trades that they serve. Accordingly, we do not believe that the modified reporting requirements for agreement commodity data in the proposed rule place an undue regulatory burden on carriers. Therefore, these requirements have been retained in this Final Rule. In cases where unique compliance problems or issues arise, a carrier may request relief, with a showing of good cause, from any of the Information Form and Monitoring Report requirements under the waiver procedures provided in the Final Rule.

C. Implementation of the Information Form and Monitoring Report Regulations

In the Supplementary Information of the NPR, the Commission indicated that the new Information Form regulations shall become effective 30 days after publication of a Final Rule in the **Federal Register**, and the new Monitoring Report regulations shall become effective 90 days after publication. To make this section consistent with the balance of the Final Rule, the effective date for the new Information Form regulations has been extended to 60 days after publication. The effective date for the new Monitoring Report regulations remains at 90 days after publication.

IV. Minutes, 46 CFR Part 535, Subpart G

A. Background

In the NPR, the Commission proposed to replace its current regulations in sections 535.706 through 535.708 on the filing requirements for minutes of meetings between parties to certain agreements with modified regulations in proposed section 535.704. The Commission found that modifications to the regulations were necessary to address problems it had encountered in the quality of information being reported in agreement minutes. As such, the proposed rule updated the regulations to require more descriptive reporting on relevant matters discussed at meetings between parties at levels that are pertinent to the decision-making process of the agreement. The proposed rule also sought to accommodate the changes in agreements that have occurred since OSRA.

Specifically, the NPR proposed to modify the current regulations to: (1) Require minutes from agreements based on the authority contained in the agreement; (2) eliminate the filing requirement that limits reporting to meetings at which the parties are authorized to take "final action;'' (3) clarify the level of detail required to describe matters discussed or considered at agreement meetings; (4) establish a new requirement that each document distributed, discussed, or exchanged at meetings be submitted with the minutes; (5) clarify the

[24] Pooling authority in a carrier agreement provides for the division of cargo carryings [cargo traffic], earnings, or revenues and/or losses between or among the parties in accordance with an established formula or scheme, as defined in 46 CFR 535.104(x). Such authority affects pricing by reducing price competition between the parties in the agreement trade.

[25] As discussed supra, the Commission modified the Monitoring Report regulations in the rule to limit reporting from agreements with pricing or pooling authority to those with a combined market share of 35 percent or more, recognizing that such higher market share agreements possess greater market power to affect competition and pricing in the marketplace.

sequential numbering of minutes; (6) reduce the filing time from 30 days to 15 days from the date of the meeting; and (7) update definitions and BTA designations, and, in particular, replace references to "conference [agreements]'' with the term "agreement.'' The Commission set forth these changes to improve the coverage of substantive issues in the filed minutes of meetings while deterring agreement parties from submitting minutes with insufficient descriptions of the relevant matters discussed at their meetings.

B. Summary of Comments and Discussion

Comments on the minutes requirements of the NPR were submitted by OCCA, APL, and PONL. Commenters acknowledged the need for the Commission to receive meaningful minutes of agreement meetings in a timely fashion. OCCA at 20. In general, however, they believe that the proposed minutes requirements are overly broad and unduly burdensome. OCCA at 21–22, APL at 8. In their view, if promulgated as proposed, the minutes regulations would overwhelm both the carriers and the Commission's staff with unnecessary paperwork and information. Id. They raise the following specific issues with respect to the proposed minutes regulations.

1. Agreements Subject to the Minutes Requirements

OCCA and APL take issue with section 535.704(a)(1) of the proposed rule, which assigned minutes requirements to agreements based on the authority contained in the agreement, as opposed to the former regulations, which assigned minutes requirements based on defined types of agreements.[26] Id. They are particularly concerned with the effects of the proposed minutes requirements on operational agreements that contain rate authority. Id. Specifically, OCCA points out that operational agreements with rate authority would be required to file minutes of meetings not only related to rate matters, but also to the "business of the agreement,'' which includes routine operational matters such as the scheduling of vessels, terminal and stevedoring arrangements, and other day-to-day functions. OCCA at 21–22. OCCA believes that minutes reporting on everyday operational issues imposes a significant burden on carriers and exceeds the intent of the rule. Id. To reduce this burden, OCCA recommends that the Commission revise the exemption provisions in section 535.704(d) to limit minutes reporting for types of operational agreements to matters solely relating to the authorities identified in section 535.704(a)(1) of the proposed rule.[27] Id.

APL concurs with OCCA's comments, and also recommends that the Commission delete the discussion or exchange of vessel-operating costs as an authority subject to the minutes requirements in section 535.704(a)(1). APL at 9. Among its comments, APL argues that parties to operational agreements, such as alliance arrangements, must, by the very nature of their agreements, discuss vessel-operating costs. Id. at 7. It asserts that the discussion of such costs is inherently relevant to making vessel deployment and operational decisions, which achieve efficiencies and cost savings. Id. Moreover, as mentioned above, APL questions the validity of the Commission's decision in FMC Docket No. 94–31, which originally assigned reporting requirements to agreements with such authority. Id. at 8.

It is not the intention of the Commission to elicit unnecessary information or impose an unjust reporting burden on agreement members under the minutes requirements. As such, we advise carriers to examine the authorities contained in their agreements, and where appropriate, eliminate any unnecessary or underutilized authority identified in section 535.704(a)(1) in the Final Rule, as modified below. While the Commission recognizes that revisions to the proposed rule would provide greater clarity and reduce any unnecessary reporting burden, particularly with respect to minor administrative and operational matters, the Commission disagrees with OCCA's recommendation on the exemption provisions in section 535.704(d).

To exempt types of agreements and to tie minutes reporting to discussions solely relating to the authorities in section 535.704(a)(1), as OCCA recommends, would undermine the clear intent of this rule. As previously discussed, the proposed rule updates the regulations to identify agreements by their authorities instead of narrowly defined agreement types. Similarly, the Commission believes that limiting minutes reporting to the authorities in section 535.704(a)(1) might also be interpreted too narrowly and relevant information might be omitted from the minutes.

The authorities in an agreement are interrelated, and the decisions reached pursuant to one authority may have a bearing on the decisions reached under the other authorities of the agreement. Without clear reporting in the minutes, the cause and effect relationship between the authorities in an agreement might not be apparent to the Commission. For instance, the discussion by parties of substantive operational matters that would affect the supply of vessel capacity under an agreement that also has rate authority would be relevant because supply can have a direct impact on the level of pricing in the marketplace. Consequently, such discussions must be fully addressed in minutes filed with the Commission.

Instead of specifically identifying which relevant issues need to be addressed in the minutes, the Commission believes that the correct approach to add clarity and reduce the reporting burden is to identify those matters that can be exempted from the minutes for all agreements subject to this section. Therefore, section 535.704(d) has been revised to include the following exemptions in the Final Rule:

(d) *Exemptions.* For parties to agreements subject to this section, the following exemptions shall apply:

(1) Minutes of meetings between parties are not required to reflect discussions of matters set forth in §§ 535.408(b)(2), (b)(3), (b)(4)(iii), (b)(4)(iv), (b)(4)(v) and (b)(4)(vi);[28]

[26] Section 535.704(a)(1) of the proposed rule reads:

[t]his section applies to agreements authorized to engage in any of the following activities: discussion or establishment of any type of rates, whether in tariffs or service contracts; pooling or apportionment of cargo; discussion of revenues, losses, or earnings; discussion or exchange of vessel-operating costs; discussion or agreement on service contract matters, including the establishment of voluntary service contract guidelines.''

68 FR 67545, December 2, 2003.

[27] OCCA suggests that a new paragraph be added to section 535.704(d) to state,

[t]o the extent a space charter, sailing or capacity rationalization agreement contains one or more types of the authority set forth in § 535.704(a), the minutes of meetings of the agreement need only reflect discussions held and agreements reached pursuant to such authority, and need not reflect discussion of or agreement upon routine operational matters such as those identified in §§ 535.508(b)(2), (b)(3), (b)(4) and (b)(5).

OCCA at 22.

[28] These sections include the following operational and administrative matters: (1) The terms and conditions of space allocation and slot sales, the procedures for allocating space, the establishment of space charter rates, and the terms and conditions of charter parties; (2) stevedoring, terminal, and related services including the operation of tonnage centers or other joint container marshaling facility; (3) procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals; (4) procedures for anticipating parties' space requirements; (5)

Continued

(2) Minutes of meetings between parties are not required to reflect discussions of matters set forth in § 535.408(b)(5) to the extent that such discussions involve minor operational matters that have little or no impact on the frequency of vessel calls at ports or the amount of vessel capacity offered by the parties in the geographic scope of the agreement; and

(3) Minutes of meetings between parties are not required to reflect discussions of or actions taken with regard to rates that, if adopted, would be required to be published in an appropriate tariff. This exemption does not apply to discussions concerning general rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

It should be noted that section 535.408(b)(4)(ii) regarding the collection, collation, and circulation of data and reports from or to members of an agreement is omitted from the exemptions in section 535.704(d) in the Final Rule. The collection and circulation of commercial information in an agreement can directly impact competition between the agreement parties and in the agreement trade. To analyze the competitive impact of an agreement properly, it is important for the Commission to remain aware of how and what commercial information is being shared and used under the agreement. Consequently, a full account of the discussions in meetings between parties on administrative matters for sharing information within the agreement must be addressed in the minutes. For agreement filing purposes, however, the Commission recognizes that the regulations must provide parties with enough flexibility to perform their daily administrative functions pursuant to the express enabling authority of their agreements without requiring the filing of continuous agreement modifications on such matters. The Commission can remain informed of the information sharing activities of the parties through filed minutes.

With respect to the discussion or exchange of vessel-operating cost data, the Commission finds it unnecessarily redundant to include such authority in section 535.704(a)(1), as was similarly the Commission's finding for the Information Form and Monitoring Report regulations. We are primarily concerned with the sharing of pricing information, which includes costs, as such information sharing affects price competition. Where vessel-operating cost data is shared for pricing purposes, the agreement would already be subject to the minutes requirements because it contains pricing authority. Agreements authorizing the exchange of vessel-operating cost data without any of the other authorities in section 535.704(a)(1), such as a simple vessel-sharing arrangement, are operational in nature, and, therefore, not subject to the minutes requirements. Accordingly, the requirement to file minutes based on agreement authority to discuss or exchange vessel-operating cost data has been deleted from section 535.704(a)(1) in the Final Rule.

The Commission believes that these revisions in the Final Rule provide carriers with a sufficient degree of reporting relief sought under the minutes requirements. It should also be noted that parties to an agreement subject to this section may request a waiver for good cause from any of the minutes requirements in accordance with the procedures provided in section 535.705. The Commission would consider granting a waiver of some or all of the minutes requirements in cases where the parties could specifically demonstrate that the agreement raises little or no anti-competitive concern under the Shipping Act, or where the parties could demonstrate that such reporting would be irrelevant or would create an undue burden.

2. Definition of Meetings

OCCA contends that the definition of the term "meeting'' proposed in section 535.704(b) would increase the number of minutes filings and impose a significant burden on carriers by eliminating "authority to take final action'' as a precondition to the minutes requirements and by including discussions among as few as two parties within the meaning of the term. OCCA at 21. PONL raises a number of questions on what constitutes a meeting under the Commission's proposed definition. PONL at 2. As such, PONL recommends that the Commission clarify the definition of a meeting for it to be meaningful, enforceable, and one to which carriers can adhere. Id. Specifically, PONL suggests that the Commission make clear that informal discussions outside the context of an agreement, especially when the representatives do not have responsibilities relating to the agreement, should not be included in the minutes requirements. Id.

The Commission believes that the definition in proposed section 535.704(b) clearly conveys the meaning and intent of the term "meeting,'' and has adopted this definition in the Final Rule without any further revision.[29] In the NPR, we explained that:

> [T]he current definition of "meeting'' is ambiguous and causes confusion over which meetings or discussions held under an agreement are subject to the requirement to file minutes with the Commission. Further, differing interpretations of the regulations have resulted in minutes of meetings not being filed when such meetings covered substantive issues. Questions have arisen over whether the minutes filing requirement is based on the level of authority of the participants at a given meeting (*i.e.*, carrier representatives, committees, and subcommittees authorized to take final action on behalf of the agreement, even if the discussions did not result in "final'' decisions), or on whether "final action'' was taken.

68 FR 67531, December 2, 2003.

Accordingly, the Commission finds the current "final action'' concept for meetings to be unworkable because of the persistently inadequate information we have received in agreement minutes. The definition in the Final Rule corrects this deficiency to ensure that the Commission receives sufficient information on the substantive issues discussed among parties to agreements subject to the minutes requirements, as such discussions relate to the business of the agreement. Where informal discussions occur among three or more parties pertaining to the business of the agreement, this constitutes a meeting as defined in section 535.704(b) of the Final Rule, and minutes of such discussions must be filed with the Commission. The business of the agreement includes all of the authorities provided for in the filed agreement. If the discussion in a meeting is of a nature that implicates an authority contained in the filed agreement, minutes of the discussion must be filed with the Commission unless specifically exempted under section 535.704(d).

With respect to electronic communication, we noted in the NPR that "it is not the intent of the Commission to require the filing of minutes for such discussions as two-party electronic communication.'' Id. For further clarity, we add that a meeting subject to this section would take place where electronic communication is used by three or more parties to discuss the business of the agreement, or where an agreement is reached between any number of parties via electronic communication. More

maintenance of books and records; and (6) details as to the following matters as between parties to the agreement: Insurance, procedures for resolutions of disputes relating to loss and/or damage of cargo, and force majeure clauses.

[29] The Commission's revisions to sections 535.704(a)(1) and 535.704(d) of the Final Rule lessen the reporting burden on carriers and reduce the number of minutes filings that would have been required by the proposed rule, while focusing minutes reporting on the substantive issues discussed in meetings between agreement parties.

precisely, a meeting would occur where electronic communication performs the functional equivalent of a person-to-person discussion between parties to an agreement. Such a meeting is subject to the minutes requirements.[30] This would include polls of the agreement membership conducted via electronic communication or telephone. The electronic transmission of information between or among the parties, which does not contemplate discussion among the parties, however, would not be considered a meeting subject to the minutes requirements.

3. Content of Minutes

OCCA objects to section 535.704(c)(3) of the proposed rule in that it omits language in the current regulations which provides that the content of minutes need not disclose the identity of parties that participate in discussions or the votes taken. OCCA at 23. OCCA argues that if the proposed minutes requirements intend for participants in discussions to be identified, agreement parties would be reluctant to make proposals and state their positions clearly, which would have a "chilling effect'' on agreement meetings. Id. at 23–24. To remedy this concern, OCCA recommends that the Commission revise section 535.704(c)(3) to include similar language as formerly provided.[31] Id.

OCCA further objects to section 535.704(c)(4) of the proposed rule that requires the submission of documents distributed, discussed, or exchanged at meetings between agreement parties. Id. OCCA argues that the proposed requirement is so expansive that it would disclose documents reflecting individual positions or proposals circulated at meetings whether or not such matters were adopted by the agreement. Id. OCCA also claims that disclosing the identity of the individual positions or proposals of parties under the proposed minutes requirements would have a "chilling effect'' on agreement meetings, and that the submission of documents, as proposed, would create a huge burden for the carriers and the Commission. Id. at 23–25. OCCA recommends that the Commission revise section 535.704(c)(4) to limit the submission of documents to only those relating to the subject matter for which minutes would be filed.[32] Id. at 25. In this manner, OCCA believes that the minutes requirements would preserve anonymity by enabling agreement minutes to reflect proposals and discussions without attributing them to a particular party. Id.

The Commission agrees with OCCA to the extent that the proposed minutes requirements were not intended to disclose the identity of parties to individual proposals, positions, or votes that transpired at agreement meetings. Accordingly, section 535.704(c)(3) has been revised to include OCCA's recommended language in the Final Rule.

With respect to the submission of documents, the Commission believes that OCCA's recommendation to provide minutes reporting in lieu of submitting certain types of documents would undermine the intent of this requirement. Specifically, this requirement is aimed at uncovering and obtaining copies of all relevant documents circulated at agreement meetings.[33]

In the NPR, we explained that:

> [I]n instances where a document is identified in the minutes, Commission staff must then determine its importance and attempt to obtain a copy of the document. We believe it is more likely that many documents, collectively prepared or used by agreement members, remain unknown to the Commission.

68 FR 67532, December 2, 2003.

On the issue of burden, we further noted in the NPR that:

> The Commission considered, as an alternative, requiring agreements to submit a summary of all documents discussed at minuted meetings in lieu of the actual document. However, we rejected this proposal, believing that requiring agreements to create a summary, simply for filing purposes, would be more burdensome than requiring submission of the documents themselves. In addition, this approach would be less burdensome on the Commission's staff as it would reduce the utilization of scarce resources in tracking down documents, and instead allow us to focus on review and analysis of concerted activities.

Id.

The above notwithstanding, the Commission understands OCCA's concerns for protecting the anonymity of the individual parties with respect to the submission of documents. The Commission is not overly concerned with who circulated a proposal at a meeting, but rather what proposals were circulated and the discussions or decisions that took place. Consistent with the revised language added to section 535.704(c)(3), section 535.704(c)(4) in the Final Rule has been revised to add the following statement:

> [a]ny documents submitted to the Commission pursuant to this section need not disclose the identity of the party or parties that circulated the document at the meeting.

4. Filing Time for Minutes

OCCA objects to the shorter filing time for minutes as proposed in the NPR, which was reduced from 30 days to 15 days after a meeting. OCCA at 26. It argues that under the new minutes requirements, and the resulting increase in the number of minutes filings, agreements will need more time, not less, to file minutes in compliance with the regulations. Id. OCCA recommends that if a shorter period is necessary, the Commission revise the rule by adjusting the filing time to 21 days after a meeting. Id. PONL concurs with OCCA's recommendation and further recommends that minutes of meetings between two or three agreement parties be permitted to file within 30 days because an administrator for the agreement might not necessarily be present at such a meeting. PONL at 3.

OCCA requests that the Commission stay the implementation of the shorter filing time for six months after the Final Rule becomes effective, whereby agreement parties may acclimate to the new regulations. OCCA at 26–27. OCCA also seeks clarification to ensure that the new regulations will only apply to meetings after the Final Rule becomes effective. Id. at 27.

In consideration of these concerns, we have revised the Final Rule by adjusting the time for filing minutes to 21 days after a meeting. The revised filing time, however, shall apply to all meetings subject to the minutes requirements of the Final Rule regardless of the number

[30] Where a meeting subject to this section has occurred, actual copies of any textual communications, which were electronically transmitted between the parties, are not required to be filed with the Commission, except for those that constitute documents as identified in section 535.704(c)(4) of the Final Rule. Rather, the minutes of such a meeting that must be filed with the Commission should contain a description of the discussions that took place via electronic communication.

[31] OCCA suggests that section 535.704(c)(3) be revised to state,

> [a] description of discussions detailed enough so that a non-participant reading the minutes could reasonably gain a clear understanding of the nature [and extent]of the discussions and, where applicable, any decisions reached. Such description need not disclose the identity of the parties that participated in the discussion or the votes taken.

OCCA at 24.

[32] Specifically, OCCA suggests that section 535.704(c)(4) be revised to read,

> [a]ny report, statistical compilation, analytical study, or other similar work in written or electronic format which is distributed, exchanged or discussed at the meeting. Memoranda or proposals prepared by one or more member lines or the agreement secretariat (other than reports, statistical compilations, analytical studies or similar works) need not be provided if the minutes reflect discussion of the subject of the memorandum or proposal.

OCCA at 25.

[33] We note that documents circulated at meetings pertaining to matters exempted in section 535.704(d) of the Final Rule are not required to be submitted with minutes filings.

of agreement parties participating in a meeting. To craft regulations with varying filing periods based on the number of participants in a meeting would overly complicate the filing process. Moreover, we anticipate that, in general, minutes of meetings between two or three agreement parties would be less involved, and thus easier to prepare for filing, than minutes of meetings with more attendees.

OCCA's request for a stay on the implementation of the shorter filing time is denied.[34] As with other sections of this rule, the new minutes requirements shall become effective 60 days after the Final Rule is published in the **Federal Register**, at which time meetings between parties in agreements identified in section 535.704(a)(1) of the Final Rule shall be subject to the new regulations.

5. Liability for the Filing of Minutes

In response to the proposed minutes requirements, PONL raises questions regarding who has the obligation to file minutes and who is liable for any violation of the filing requirements. PONL at 2. PONL believes that the failure of two or three agreement parties to file minutes of their meetings should not extend liability to the other agreement parties that did not participate in the meetings. Id. at 3.

The Commission disagrees with PONL's view regarding the liability of agreement parties to file minutes of their meetings. It is our policy that the obligation and liability for complying with filing requirements pertaining to an agreement, whether minutes, Information Forms, Monitoring Reports, or other documentation, are shared equally by all parties to the agreement.

In terms of the filing practices of agreements, we note that agreements often choose to divide the various filing requirements among themselves or through a third party, such as an agreement secretariat or a filing counsel. Even though some agreements file portions of their data individually, such as Monitoring Report information, all parties of an agreement are jointly liable for the failure of the agreement to comply with the regulations.[35] By promulgating this rule, the Commission has not altered liability for violations. One party's failure to file imposes liability on the entire agreement, as well as its members. Under the new regulations, a party to an agreement continues to be liable for the actions, and failures, of the other parties to the agreement.[36]

V. Statutory Reviews

The reporting, recordkeeping, and disclosure requirements contained in this Final Rule have been submitted to the Office of Management and Budget (OMB). Public burden for this collection of information is estimated to average 37 hours per response for agreement filings (including Information Forms); 250 hours per quarterly response for Monitoring Reports from major pricing agreements; 170 hours per quarterly response for Monitoring Reports from less anti-competitive pricing agreements; 40 hours per quarterly response for Monitoring Reports from capacity rationalization agreements; and two hours per response for minutes filing. The overall estimated burden is 35,770 hours per annum, a reduction of 59.8 percent from the current estimated burden of 88,970 hours per annum. These estimates include, as applicable, 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 respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that this Final Rule will not have a significant impact on a substantial number of small entities. The affected universe of parties is limited to ocean common carriers, passenger vessel operators, and marine terminal operators. The Commission has determined that these entities do not come under the program and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees or annual receipts or both to qualify as a small entity under the Small Business Administration Guidelines.

List of Subjects

46 CFR Part 501

Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 535

Freight, Maritime carriers, Reporting and recordkeeping requirements.

■ The Federal Maritime Commission is amending parts 501 and 535 of subchapter A and subchapter B, respectively, of chapter IV of title 46 of the Code of Federal Regulations as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903, and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR part 2638; Pub. L. 89–777, 80 Stat. 1356; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Amend § 501.26 by revising paragraphs (c) and (d), and adding new paragraphs (o) and (p) to read as follows:

§ 501.26 Delegation to the Director, Bureau of Trade Analysis.

* * * * *

(c) Authority to grant or deny applications filed under § 535.504 of this chapter for waiver of the Information Form requirements in subpart E of part 535.

(d) Authority to grant or deny applications filed under § 535.705 of this chapter for waiver of the reporting requirements in subpart G of part 535 of this chapter.

* * * * *

(o) Authority to require Monitoring Reports from, or prescribe alternative periodic reporting requirements for, parties to agreements under § 535.702(c) and (d) of this chapter.

(p) Authority to require parties to agreements subject to the Monitoring Report requirements in § 535.702(a)(2) of this chapter to report their agreement commodity data on a sub-trade basis pursuant to § 535.703(d) of this chapter.

■ 3. Revise part 535 to read as follows:

[34] Again, the Commission believes that the revisions to the minutes requirements in the Final Rule, which reduce the reporting burden and the number of minutes filings that would have been required by the NPR, provide sufficient relief for agreement parties subject to this section.

[35] For some agreements, the Commission has granted a waiver to allow each party to file its commercially sensitive data separately under the Monitoring Report requirements. These are usually smaller agreements that do not employ a third party to handle such matters. Nevertheless, where one party fails to file its required data, the entire agreement fails to meet the Monitoring Report requirements in violation of the Commission's regulations and may be subject to civil penalties under section 13(a) of the Shipping Act. 46 U.S.C. app. 1712(a).

[36] We have also clarified the proposed rule at section 535.902 regarding falsification of reports to encompass all of the information and reporting requirements contained in subparts E and G of part 535.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

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535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A To Part 535—Information Form and Instructions
Appendix B To Part 535—Monitoring Report and Instructions

Authority: 5 U.S.C. 553; 46 U.S.C. 1701–1707, 1709–1710, 1712 and 1714–1718; Pub. L. 105–258, 112 Stat. 1902 (46 U.S.C. 1701 note); Sec. 424, Pub. L. 105–383, 112 Stat. 3440.

Subpart A—General Provisions

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 (“the Act’’), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

§ 535.102 Purpose.

This part implements those provisions of the Act that govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those types of agreements that must be accompanied by information submissions when they are first filed, and sets forth the kind of information for certain agreements that the Commission believes relevant to that review. Only information that is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) To further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from the filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. To minimize delay in the implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, certain classes of agreements are exempt from the filing requirements of this part.

(e) Under the regulatory framework established by the Act, the role of the Commission as a monitoring agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective to assure their continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only information that is necessary to assure that the Commission’s monitoring responsibilities will be fulfilled is requested.

(f) The Act requires that conference agreements contain certain mandatory provisions. Each conference agreement must:

(1) State its purpose;

(2) Provide reasonable and equal terms and conditions for admission and readmission to membership;

(3) Allow for withdrawal from membership upon reasonable notice without penalty;

(4) Require an independent neutral body to police the conference, if requested by a member;

(5) Prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act;

(6) Provide for a consultation process;

(7) Establish procedures for considering shippers' requests and complaints; and

(8) Provide for independent action.

(g) To promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

§ 535.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement, or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Capacity rationalization* means a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers that provides for the fixing of and adherence to uniform tariff rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(i) *Cooperative working agreement* means an agreement that establishes exclusive, preferential, or cooperative working relationships that are subject to the Act, but that do not fall precisely within the parameters of any specifically defined agreement.

(j) *Effective agreement* means an agreement effective under the Act.

(k) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such ocean common carriers associate for the purpose of gaining reciprocal access to cargo that is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(l) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine, and investigate alleged breaches or violations of the conference agreement and/or the conference's properly promulgated tariffs, rules, or regulations by any member of the conference.

(m) *Information Form* means the form containing economic information that must accompany the filing of certain agreements and modifications.

(n) *Interconference agreement* means an agreement between conferences.

(o) (1) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established that:

(i) Holds itself out in its own distinct operating name;

(ii) Independently fixes its own rates, charges, practices, and conditions of service or chooses to participate under its operating name in another agreement that is duly authorized to determine and implement such activities;

(iii) Independently publishes its own tariff or chooses to participate under its operating name in an otherwise established tariff;

(iv) Issues its own bills of lading; and

(v) Acts generally as a single carrier.

(2) The common use of facilities in a joint service may occur, and there is no competition between members for cargo in the agreement trade; but they otherwise maintain their separate identities.

(p) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two

ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

(r) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multi-employer bargaining group; but the term does not include an assessment agreement.

(s) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(t) *Monitoring Report* means the report containing economic information that must be filed at defined intervals with regard to certain agreements that are effective under the Act.

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(v) *Ocean freight forwarder* means a person in the United States that dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and processes the documentation or performs related activities incident to those shipments.

(w) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(x) *Pooling agreement* means an agreement between ocean common carriers that provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(y) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(z) *Rate,* for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(aa) *Rate agreement* means an agreement between ocean common carriers that authorizes the discussion of or agreement on, either on a binding basis under a common tariff or on a non-binding basis, any kind of rate or charge.

(bb) *Sailing agreement* means an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(dd) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier (*i.e.*, a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(ee) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(ff) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(gg) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel space for use by another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity rationalization as defined in this subpart.

(hh) *Sub-trade* means the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as follows:

(1) Atlantic and Gulf shall encompass ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. It also includes all ports bordering on the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and

(2) Pacific shall encompass all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. It also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

(ii) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more

carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(jj) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation and the publishing carrier performs the transportation on one leg of the through transportation on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement that involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Act and this part.

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

Subpart B—Scope

§ 535.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) Control, regulate, or prevent competition in international ocean transportation; or

(7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements.* This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; or

(2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

§ 535.202 Non-subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and

(e) Any agreement among marine terminal operators that exclusively and solely involves transportation in the interstate commerce of the United States.

Subpart C—Exemptions

§ 535.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreement involving ocean common carriers and/or marine terminal operators from any requirement of the Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for exemptions set forth at § 502.67 of this title.

(d) *Retention of agreement by parties.* Any agreement that has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Trade Analysis for inspection during the term of the agreement and for a period of three years after its termination.

§ 535.302 Exemptions for certain modifications of effective agreements.

(a) Non-substantive modifications to effective agreements. A non-substantive modification to an effective agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, is one which:

(1) Reflects changes in the name of any geographic locality stated therein, the name of the agreement or the name of a party to the agreement, the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement;

(2) Corrects typographical and grammatical errors in the text of the agreement or renumbers or reletters articles or sub-articles of agreements and references thereto in the text; or

(3) Reflects changes in the titles of persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) Other Miscellaneous Modifications to effective agreements. A miscellaneous modification to an effective agreement is one that:

(1) Cancels the agreement or a portion thereof;

(2) Deletes an agreement party;

(3) Changes the parties to a conference agreement or a discussion agreement among passenger vessel operating common carriers that is open to all ocean common carriers operating passenger vessels of a class defined in the agreements and that does not contain ratemaking, pooling, joint service, sailing or space chartering authority; or

(4) Changes the officials of the agreement and delegations of authority.

(c) A copy of a modification described in (a) or (b) of this section shall be submitted to the Commission but is otherwise exempt from the waiting period requirement of the Act and this part.

(d) Parties to agreements may seek a determination from the Director of the Bureau of Trade Analysis as to whether a particular modification is a non-

substantive or other miscellaneous modification within the meaning of this section.

(e) The filing fee for non-substantive or other miscellaneous modifications is provided in § 535.401(g).

§ 535.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent handles routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does not include an agreement that provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of husbanding agreements is provided in § 535.401(g).

§ 535.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent solicits and books cargoes and signs contracts of affreightment and bills of lading on behalf of the ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement as defined above is exempt from the filing requirements of the Act and of this part, except those:

(1) Where a common carrier is to be the agent for a competing ocean common carrier in the same trade; or

(2) That permit an agent to enter into similar agreements with more than one ocean common carrier in a trade.

(c) The filing fee for optional filing of agency agreements is provided in § 535.401(g).

§ 535.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for:

(1) The exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and

(2) The transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of equipment interchange agreements is provided in § 535.401(g).

§ 535.306 Nonexclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

§ 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent'exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) The filing fee for optional filing of these agreements is provided in § 535.401(g).

§ 535.308 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification or appendix) that applies to future, prospective activities between or among the parties and that relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices, and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 535.308(a), with the exception of marine terminal conference, marine terminal interconference, and marine terminal discussion agreements as defined in § 535.308(b), (c), and (d), are exempt from the waiting period requirements of the Act and this part and will, accordingly, be effective on filing with the Commission.

(f) The filing fee for marine terminal agreements is provided in § 535.401(g).

§ 535.309 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services. The term *marine terminal services agreement* does not include any agreement that conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.309(a) are exempt from the filing and waiting period requirements of the Act and this part on condition that:

(1) They do not include rates, charges, rules, and regulations that are determined through a marine terminal conference agreement, as defined in § 535.308(b); and

(2) No antitrust immunity is conferred under the Act with regard to terminal services provided to an ocean common carrier under a marine terminal services agreement that is not filed with the Commission.

(c) The filing fee for optional filing of terminal services agreements is provided in § 535.401(g).

§ 535.310 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(c) Parties to marine terminal facilities agreements currently in effect shall provide copies to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for optional filing of terminal facilities agreements is provided in § 535.401(g).

§ 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any agreement among ocean common carriers which contains none of the authorities listed in 535.502(b) and for which the combined market share of the parties in any of the agreement's sub-trade is either:

(1) Less than 30 percent, if all parties are members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b); or

(2) Less than 35 percent, if all parties are not members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b).

(b) Low market share agreements are exempt from the waiting period requirement of the Act and this part, and are effective on filing.

(c) Parties to agreements may seek a determination from the Director, Bureau of Trade Analysis, as to whether a proposed agreement meets the general definition of a low market share agreement.

(d) The filing fee for low market share agreements is provided in § 535.401(g).

§ 535.312 Vessel charter party-exemption.

(a) For purposes of this section, vessel charter party shall mean a contractual agreement between two ocean common carriers for the charter of the full reach of a vessel, which agreement sets forth the entire terms and conditions (including duration, charter hire, and geographical or operational limitations, if any) under which the vessel will be employed.

(b) Vessel charter parties, as defined in paragraph (a) of this section, are exempt from the filing requirements of the Act and this part.

(c) The filing fee for optional filing of vessel charter parties is provided in § 535.401(g).

Subpart D—Filing of Agreements

§ 535.401 General requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, DC 20573. Such filing shall consist of:

(1) A true copy and seven additional copies of the executed agreement;

(2) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b) The letter of transmittal shall:

(1) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed;

(2) Provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(3) Clearly provide the typewritten or otherwise imprinted name, position, business address, and telephone number of the filing party; and

(4) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(c) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(d) Any agreement that does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601(b).

(e) Assessment agreements shall be filed and shall be effective upon filing.

(f) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the 45-day waiting period required under the Act.

(g) *Fees.* The filing fee is $1,834 for new agreements requiring Commission review and action; $931 for agreement modifications requiring Commission review and action; $442 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see 46 CFR 501.26(e)); and $145 for carrier and terminal exempt agreements.

(h) The fee for a copy of the Commission's agreement database report is $32.

§ 535.402 Complete and definite agreements.

An agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members, unless those details are matters specifically enumerated as exempt from the filing requirements of this part.

§ 535.403 Form of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include a Title Page indicating:

(1) The full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) If applicable, the expiration date of the agreement; and

(4) The original effective date of the agreement whenever the Title Page is revised.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement title page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page. For agreement modifications, the appropriate amendment number for each modification should also appear on the page along with the basic agreement number.

(d) Each agreement and/or modification filed will be signed in the original by an official or authorized representative of each of the parties and shall indicate the typewritten full name of the signing party and his or her position, including organizational affiliation. Faxed or photocopied signatures will be accepted if replaced with an original signature as soon as practicable before the effective date.

(e) Every agreement shall include a Table of Contents indicating the location of all agreement provisions.

§ 535.404 Agreement provisions.

Generally, each agreement should:

(a) Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name, and the address of its principal office (not the address of any agent or representative not an employee of the participating party);

(b) State the ports or port ranges to which the agreement applies as well as any inland points or areas to which it also applies; and

(c) Specify, by organizational title, the administrative and executive officials determined by the agreement parties to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, the agreement should specify:

(1) The official(s) with authority to file the agreement and any modification thereto and to submit associated supporting materials; and

(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

§ 535.405 Organization of conference agreements.

Each conference agreement shall:

(a) State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. The agreement must include a description of any such neutral body authority and procedures related thereto.

(b) State affirmatively that the conference parties shall not engage in conduct prohibited by sections 10(c)(1) or 10(c)(3) of the Act.

(c) Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(d) Include provisions for independent action in accordance with § 535.801 of this part.

§ 535.406 Modification of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be filed in accordance with the provisions of §§ 535.401, 535.402, and 535.403.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published ("revised page''). The revised page shall indicate the consecutive denomination of the revision (*e.g.*, "1st Revised Page 7''). Additional material may be published on a new original page. New original pages inserted between existing effective pages shall be numbered with an alpha suffix (*e.g.*, a page inserted between page 7 and page 8 shall be numbered 7a).

(c) Each revised page shall be accompanied by a duplicate page, submitted for illustrative purposes only, indicating the language being modified in the following manner:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page that shall indicate the new location of the provisions.

§ 535.407 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the requirements of §§ 535.401, 535.403, 535.404, 535.405, and 535.406.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

(1) The specific provisions from which relief is sought;

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective review of the agreement.

§ 535.408 Activities that may be conducted without further filings.

(a) Agreements that arise from authority of an effective agreement but whose terms are not fully set forth in the effective agreement to the extent required by § 535.402 are permitted without further filing only if they:

(1) Are themselves exempt from the filing requirements of this part (pursuant to subpart C—Exemptions of this part); or

(2) Are listed in paragraph (b) of this section.

(b) Unless otherwise exempt in subpart C of this part, only the following technical or operational matters of an agreement's affairs established pursuant to express enabling authority in an agreement are considered part of the effective agreement and do not require further filing under section 5 of the Act:

(1) Establishment of tariff rates, rules and regulations and their joint publication;

(2) The terms and conditions of space allocation and slot sales, the procedures for allocating space, the establishment of space charter rates, and the terms and conditions of charter parties;

(3) Stevedoring, terminal, and related services including the operation of tonnage centers or other joint container marshaling facilities;

(4) The following administrative matters:

(i) Scheduling of agreement meetings;

(ii) Collection, collation and circulation of data and reports from or to members;

(iii) Procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals;

(iv) Procedures for anticipating parties' space requirements;

(v) Maintenance of books and records; and

(vi) Details as to the following matters as between parties to the agreement: insurance, procedures for resolutions of disputes relating to loss and/or damage of cargo, and force majeure clauses;

(5) The following operational matters:

(i) Port rotations and schedule adjustments; and

(ii) Changes in vessel size, number of vessels, or vessel substitution or replacement, if the resulting change is within a capacity range specified in the agreement; and

(6) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

Subpart E—Information Form Requirements

§ 535.501 General requirements.

(a) Agreements and modifications to agreements identified in § 535.502 shall be accompanied by an Information Form containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time the agreement is filed. A copy of the Form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at *http://www.fmc.gov,* or a paper copy of the Form may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed electronic format, either on diskette or CD–ROM.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. If a party to the agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) Agreement parties may supplement the Information Form with any additional information or material to assist the Commission's review of an agreement.

(e) The Information Form and any additional information submitted in conjunction with the filing of an agreement shall not be disclosed by the Commission except as provided in § 535.608.

§ 535.502 Agreements subject to the Information Form requirements.

Agreements and modifications to agreements between or among ocean common carriers subject to this subpart are:

(a) All agreements identified in § 535.201(a), except for low market share agreements identified in § 535.311;

(b) Modifications to an agreement that add any of the following authorities:

(1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(2) The discussion of, or agreement on, capacity rationalization;

(3) The establishment of a joint service;

(4) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(5) The discussion of, or agreement on, any service contract matter; and

(c) Modifications that expand the geographic scope of an agreement containing any authority identified in § 535.502(b).

§ 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, are set forth in sections I through V of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form shall apply as follows:

(1) Sections I and V shall be completed by parties to all agreements identified in § 535.502;

(2) Section II shall be completed by parties to agreements identified in § 535.502(a) that contain any of the following authorities: the charter or use of vessel space in exchange for compensation or services; or the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a joint service, nor capacity rationalization;

(3) Section III shall be completed by parties to agreements identified in § 535.502 that contain the authority to discuss or agree on capacity rationalization; and

(4) Section IV shall be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

§ 535.504 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the Information Form requirements in this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Information Form to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001, and shall state:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief;

(4) Why granting the requested waiver will not substantially impair effective review of the agreement; and

(5) A description of the full membership, geographic scope, and authority of the agreement or the agreement modification that is to be filed with the Commission.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

Subpart F—Action on Agreements

§ 535.601 Preliminary review-rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.504.

(b)(1) The Commission shall reject any agreement that fails to comply substantially with the filing and Information Form of the Act and this part. The Commission shall notify the filing party in writing of the reason for rejection of the agreement. The original filing, along with any supplemental information or documents submitted, shall be returned to the filing party.

(2) Should a rejected agreement be refiled, the full 45-day waiting period will apply to the refiled agreement.

§ 535.602 Federal Register notice.

(a) A notice of any filed agreement will be transmitted to the **Federal Register** within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the **Federal Register** notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to:

(1) A reply to the comment by the Commission;

(2) The institution of any Commission or court proceeding;

(3) Discussion of the comment in any Commission or court proceeding concerning the filed agreement; or

(4) Participation in any proceeding that may be instituted.

§ 535.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the **Federal Register**.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. A new 45-day waiting period begins on the date of receipt of all the additional material requested or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order or the Commission grants expedited review.

§ 535.605 Requests for expedited review.

(a) Upon written request of the filing party, the Commission may shorten the waiting period. In support of a request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. In

reviewing requests, the Commission will consider the parties' needs and the Commission's ability to complete its review of the agreement's potential impact. In no event, however, may the period be shortened to less than fourteen (14) days after the publication of the notice of the filing of the agreement in the **Federal Register**. When a request for expedited review is denied, the normal 45-day waiting period will apply. Requests for expedited review will not be granted routinely and will be granted only on a showing of good cause. Good cause would include, but is not limited to, the impending expiration of the agreement; an operational urgency; Federal or State imposed time limitations; or other reasons that, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited review will be considered for an agreement whose 45-day waiting period has begun anew after being stopped by a request for additional information.

§ 535.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documents necessary to complete the statutory review required by the Act. The request shall be made prior to the expiration of the 45-day waiting period. All responses to a request for additional information shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573.

(b) Where the Commission has made a request for additional information, the agreement's effective date will be 45 days after receipt of the complete response to the request for additional information. If all questions are not fully answered or requested documents are not supplied, the parties must include a statement of reasons why questions were not fully answered or documents supplied. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the oral request.

(d) The Commission will publish a notice in the **Federal Register** that it has requested additional information and serve that notice on any commenting parties. The notice will indicate only that a request was made and will not specify what information is being sought. Interested parties will have fifteen (15) days after publication of the notice to file further comments on the agreement.

§ 535.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for additional information. The Commission may request that the court:

(1) Order compliance with the request;

(2) Extend the review period until there has been substantial compliance; or

(3) Grant other equitable relief that under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information that is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

§ 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in these negotiations.

Subpart G—Reporting Requirements

§ 535.701 General requirements.

(a) Parties to agreements identified in § 535.702(a) shall submit quarterly Monitoring Reports on an ongoing basis for as long as the agreement remains in effect, containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to agreements identified in § 535.704 are required to submit minutes of their meetings for as long as their agreements remain in effect.

(c) If a joint service is a party to an agreement that is subject to the requirements of this subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001. A copy of the Monitoring Report form in Microsoft Word and Excel format may be downloaded from the Commission's home page at *http://www.fmc.gov*, or a paper copy may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Monitoring Reports in the Commission's prescribed electronic format, either on diskette or CD–ROM.

(e)(1) The regulations in this paragraph (e) are stayed until further notice.

(2) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from

the Commission's Bureau of Trade Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Except as otherwise instructed, Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Minutes of meetings shall be filed within 21 days after the meeting. Other documents shall be filed within 15 days of the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the Monitoring Report shall be supplied to each item. If a party to an agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(h) A Monitoring Report for a particular agreement may be supplemented with any other relevant information or documentary material.

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted by a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

(j) Monitoring Report or alternative periodic reporting requirements in this subpart shall not be construed to authorize the exchange or use by or among agreement members of information required to be submitted.

§ 535.702 Agreements subject to Monitoring Report and alternative periodic reporting requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are:

(1) An agreement that contains the authority to discuss or agree on capacity rationalization; or

(2) Where the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities:

(i) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

(b) The determination of an agreement's reporting obligation under § 535.702(a)(2) in the first instance shall be based on the market share data reported on the agreement's Information Form pursuant to § 535.503. Thereafter, at the beginning of each calendar year, the Bureau of Trade Analysis will notify the agreement parties of any changes in its reporting requirements based on market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April-June).

(c) The Commission may require, as necessary, that the parties to an agreement with market share below the 35 percent threshold, as identified and defined in § 535.702(a)(2), submit Monitoring Reports pursuant to § 535.703.

(d) In addition to or instead of the Monitoring Report in § 535.703, the Commission may prescribe, as necessary, alternative periodic reporting requirements for parties to any agreement identified in § 535.201.

§ 535.703 Monitoring Report form.

(a) For agreements subject to the Monitoring Report requirements in § 535.702(a), the Monitoring Report form, with instructions, is set forth in sections I through III of appendix B of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Monitoring Report shall apply as follows:

(1) Section I shall be completed by parties to agreements identified in § 535.702(a)(1);

(2) Section II shall be completed by parties to agreements identified in § 535.702(a)(2); and

(3) Section III shall be completed by parties to all agreements identified in § 535.702(a).

(c) In accordance with the requirements and instructions in appendix B of this part, parties to an agreement subject to part 2(C) of section I of the Monitoring Report shall submit a narrative statement on any significant reductions in vessel capacity that the parties will implement under the agreement. The term "a significant reduction'' is defined in appendix B. The narrative statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement.

(d)(1) The Commission may require, in its discretion, that the information on the top agreement commodities in part 4 of section II of the Monitoring Report be reported on a sub-trade basis, as defined in appendix B of this part, rather than on an agreement-wide basis. When commodity sub-trade information is required under this section, the Commission shall notify the parties to the agreement.

(2) For purposes of § 535.703(d)(1), the top agreement commodities shall mean the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the agreement parties in each sub-trade within the geographic scope of the agreement during the calendar quarter. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades shall be stated separately. All other instructions, definitions, and terms shall apply as specified and required in appendix B of this part.

§ 535.704 Filing of minutes.

(a) *Agreements required to file minutes.*

(1) This section applies to agreements authorized to engage in any of the following activities: discussion or establishment of any type of rates or charges, whether in tariffs or service contracts; pooling or apportionment of cargo traffic; discussion of revenues, losses, or earnings; or discussion or

agreement on service contract matters, including the establishment of voluntary service contract guidelines.

(2) Each agreement to which this section applies shall file with the Commission, through a designated official, minutes of all meetings defined in paragraph (b) of this section, except as provided in paragraph (d) of this section.

(b) *Meetings.* For purposes of this subpart, the term meeting shall include all discussions at which any agreement is reached among any number of the parties to an agreement relating to the business of the agreement, and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement. This includes, but is not limited to, meetings of the members' agents, principals, owners, officers, employees, representatives, committees, or subcommittees, and communications among members facilitated by agreement officials. Discussions conducted by telephone, electronic device, or other means are included.

(c) *Content of minutes.* Minutes shall include the following:

(1) The date, time, and place of the meeting;

(2) A list of participants and companies represented;

(3) A description of discussions detailed enough so that a non-participant reading the minutes could reasonably gain a clear understanding of the nature and extent of the discussions and, where applicable, any decisions reached. Such description need not disclose the identity of the parties that participated in the discussion or the votes taken; and

(4) Any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means. Where the aforementioned materials are reasonably available to the public, a citation to the work or relevant part thereof is acceptable in lieu of the actual work. Any documents submitted to the Commission pursuant to this section need not disclose the identity of the party or parties that circulated the document at the meeting.

(d) *Exemption.* For parties to agreements subject to this section, the following exemption shall apply:

(1) Minutes of meetings between parties are not required to reflect discussions of matters set forth in § 535.408(b)(2), (b)(3), (b)(4)(iii), (b)(4)(v), and (b)(4)(vi);

(2) Minutes of meetings between parties are not required to reflect discussion of matters set forth in § 535.408(b)(5) to the extent that such discussions involve minor operational matters that have little or no impact on the frequency of vessel calls at ports or the amount of vessel capacity offered by the parties in the geographic scope of the agreement; and

(3) Minutes of meetings between parties are not required to reflect discussions of or actions taken with regard to rates that, if adopted, would be required to be published in an appropriate tariff. This exemption does not apply to discussions concerning general rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

(e) *Serial numbers.* Each set of minutes filed with the Commission shall include the agreement name and FMC number and a unique identification number indicating the sequence in which the meeting took place during the calendar year.

§ 535.705 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001, and shall state and provide the following:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief; and

(4) Why granting the requested waiver will not substantially impair effective monitoring of the agreement.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action ("IA") procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, "adopt" means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such a rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice

requirement. In the case of an independent action time/volume rate ("IA TVR''), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than "adopt'' (*e.g.*, "follow,'' "match'') can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (*i.e.*, a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering that results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regardless if the duration is for a specified period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line's IA.

(i) Any new conference agreement or any modification to an existing conference agreement that does not comply with the requirements of this section shall be rejected pursuant to § 535.601 of this part.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by § 535.801 may be made to the particular ratemaking section.

§ 535.802 Service contracts.

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Act.

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573–0001. Voluntary guidelines shall be kept confidential in accordance with § 535.608 of this part. Use of voluntary guidelines prior to their submission is prohibited.

§ 535.803 Ocean freight forwarder compensation.

No conference or group of two or more ocean common carriers may:

(a) Deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) Agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

Subpart I—Penalties

§ 535.901 Failure to file.

Any person operating under an agreement, involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, that has not been filed and that has not become effective pursuant to the Act and this part is in violation of the Act and this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 535.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable agreement information and/or reporting requirements pursuant to subparts E and G of this part, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement in the following table:

Section	Current OMB control No.
535.101 through 535.902	3072–0045

Appendix A to Part 535—Information Form and Instructions

Information Form Instructions

1. All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through V of this Form. Sections I and V must be completed by all such agreements. In addition, sections II, III and IV must be completed, as applicable, in accordance with the authority contained in each agreement. Where an

agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party.

2. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and *TEU* means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Form, the terms "entire geographic scope of the agreement'' or "agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade,'' which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

Section I

Section I applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section. The authorities listed in part 4 of this section do not necessarily include all of the authorities that must be set forth in an agreement filed under the Act. The specific authorities between the parties to an agreement, however, must be set forth, clearly and completely, in a filed agreement in accordance with 46 CFR 535.402.

Part 1

State the full name of the agreement.

Part 2

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties' business activities as ocean common carriers in the foreign commerce of the United States, and the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

Part 3

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

Part 4(A)

Identify whether the agreement authorizes the parties to discuss, or agree upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge.

Part 4(B)

Identify whether the agreement authorizes the parties to establish a joint service.

Part 4(C)

Identify whether the agreement authorizes the parties to pool cargo traffic or revenues.

Part 4(D)

Identify whether the agreement authorizes the parties to discuss, or agree on, any service contract matter.

Part 4(E)

Identify whether the agreement authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e).

Part 4(F)

Identify whether the agreement contains provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement.

Part 4(G)

Identify whether the agreement authorizes the parties to charter or use vessel space in exchange for compensation or services. This authority does not include capacity rationalization as referred to in part 4(E) of this section.

Part 4(H)

Identify whether the agreement authorizes the parties to rationalize sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. This authority does not include the establishment of a joint service or capacity rationalization as referred to in parts 4(B) and 4(E) of this section.

Section II

Section II applies to agreements identified in 46 CFR 535.502(a) that contain any of the following authorities: a) the charter or use of vessel space in exchange for compensation or services; or b) the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a "joint service,'' nor "capacity rationalization'' as these terms are defined in 46 CFR 535.104 (o) and (e). Parties to agreements identified in this section must complete all items in part 1.

Part 1(A)

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 1(B)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term "none'' in response to part 1(B) of this section.

Section III

Section III applies to agreements identified in 46 CFR 535.502 that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 and 2 of this section.

Part 1(A)

1. For the most recent calendar quarter for which complete data are available, provide the amount of vessel capacity for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would be covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 1(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 1(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would be covered by the agreement, carried on any vessel space counted under part 1(A) of this section, divided by its total vessel capacity as defined and derived in part 1(A) of this section, which quotient is multiplied by 100.

Part 1(C)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the amounts of vessel capacity for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term "none'' in response to part 1(C) of this section.

Part 2(A)

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

Part 2(B)

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term "none'' in response to part 2(B) of this section.

Section IV

Section IV applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: a) the discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 5 of this section.

Part 1

1. For the most recent calendar quarter for which complete data are available, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of "sub-trade'' under the procedures described in 46 CFR 535.504. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The parties must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 2

1. For each party that served all or any part of the geographic scope of the agreement during all or any part of the most recent 12-month period for which complete data are available, provide each party's total liner revenues within the geographic scope, total liner cargo carried within the geographic scope, and average revenue. For purposes of this Form, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that would fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues within the geographic scope divided by its total cargo carried within the geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic scope, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, each party shall report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(A)

For the same 12-month period used in part 2 of this section, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including

commodities not subject to tariff publication) carried by all the parties for their liner services that would fall under the agreement. For purposes of this Form, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 3(B)

Provide the cargo volume and revenue results for each party for each of the major commodities listed in part 3(A) of this section, corresponding to the same 12-month period and unit of measurement used. For purposes of this Form, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 3(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 3(A) of this section, it shall be noted by using a zero for that party in response to part 3(B) of this section.

Part 4(A)

For the same calendar quarter used in part 1 of this section, provide the amount of vessel capacity for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would fall under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 4(B)

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 4(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would fall under the agreement, carried on any vessel space counted under part 4(A) of this section, divided by its total vessel capacity as defined and derived in part 4(A) of this section, which quotient is multiplied by 100.

Part 4(C)

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the amounts of vessel capacity for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term "none'' in response to part 4(C) of this section.

Part 5(A)

For the same 12-month period used in parts 2 and 3 of this section, provide the number of vessel calls each party made at each port for its liner services that would fall under the agreement within the entire geographic scope of the agreement.

Part 5(B)

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term "none'' in response to part 5(B) of this section.

Section V

Section V applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part 1(B)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding a request for additional information or documents.

Part 1(C)

A representative of the parties shall sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

Privacy Act and Paperwork Reduction Act Notice

1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984, 46 U.S.C. app. § 1714. The submission of this form is mandatory for parties to agreements that contain certain authorities.

2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072–0045.

3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 30 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.

4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001; or by e-mail *secretary@fmc.gov.*

FEDERAL MARITIME COMMISSION
INFORMATION FORM FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I

Part 1

Agreement Name: _____

Part 2

Narrative statement on agreement purpose, and commercial or other circumstances requiring the agreement: _____

_____

_____

Part 3

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part 4

This agreement includes:

(A) Authority to discuss or agree upon rates or charges?	Yes ☐	No ☐
(B) Joint service?	Yes ☐	No ☐
(C) Pooling of cargo traffic or revenues?	Yes ☐	No ☐
(D) Authority to discuss or agree on service contracts and their terms?	Yes ☐	No ☐
(E) Authority to discuss or agree on capacity rationalization?	Yes ☐	No ☐
(F) Conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services in the geographic scope?	Yes ☐	No ☐
(G) Authority to charter vessel space?	Yes ☐	No ☐
(H) Authority to rationalize sailings or services?	Yes ☐	No ☐

Section II

Part 1

(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .
(B) Narrative statement on significant changes in vessel calls: _____

_____

_____

Section III

Part 1 Vessel Capacity And Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel Capacity [TEUs or other units]	(B) Utilization [percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		

Etc. . . .
(C) Narrative statement on significant changes in vessel capacity: _____

_____

_____

Part 2 Vessel Calls

(A) Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]

Carrier B
Carrier C
Etc. . . .
(B) Narrative statement on anticipated or planned changes: _____

Section IV

Part 1 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	TEUs [or other units]	Percent
Agreement Market Share:		
Line A [Name]	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Non-Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 2 Total Liner Cargo and Revenues

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]

[Name]	Total revenues	TEUs [or other units]	Average revenue
Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 3 Top Liner Commodities

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same 12-Months in part 2 of this section]

[Name]	Carrier A	Carrier B	Etc. . . .
Commodity 1 [Name and 4-Digit Code]:			
TEUs [or other units]	X,XXX	X,XXX	
Revenues	$	$	
Commodity 2:			
TEUs	X,XXX	X,XXX	
Revenues	$	$	
Etc. . . .			

Part 4 Vessel Capacity and Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same Calendar Quarter in part 1 of this section]

	(A) Vessel capacity [TEUs or other units]	(B) Utilization [percent]
Carrier A [Name]		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX

	(A) Vessel capacity [TEUs or other units]	(B) Utilization [percent]
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant changes in vessel capacity: _____

Part 5

(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Same 12-Months in parts 2 and 3 of this section]
[Port Names] Port 1 Port 2 Port 3 Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .
(B) Narrative statement on significant changes in vessel calls: _____

Section V

Contact Persons and Certification

(A) Person(s) to Contact Regarding Information Form.
(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Fax Number _____
(6) E-Mail Address _____
(B) Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).
(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Fax Number _____
(6) E-Mail Address _____
(C) Certification
This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.
Name (please print or type) _____
Title _____
Relationship with parties to agreement _____
Signature _____
Date _____

Appendix B to Part 535—Monitoring Report and Instructions

Monitoring Report Instructions

1. All agreements between or among ocean common carriers identified in 46 CFR 535.702(a) must submit completed Monitoring Reports to the full extent required in sections I through III of this Report. Sections I and II must be completed, as applicable, in accordance with the authority contained in each agreement. Section III must be completed by all agreements subject to Monitoring Report requirements.

2. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Monitoring Report specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Report, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Report, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Report as a single agreement party.

3. For clarification of the agreement terminology used in this Report, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Report: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Report, the terms "entire geographic scope of the agreement'' or "agreement-wide'' refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade,'' which is defined for reporting purposes as the scope of all liner movements

between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

Section I

Section I applies to agreements, identified in 46 CFR 535.702(a)(1), that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 through 3 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2(A)

1. For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that is covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 2(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 2(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that is covered by the agreement, carried on any vessel space counted under part 2(A) of this section, divided by its total vessel capacity as defined and derived in part 2(A) of this section, which quotient is multiplied by 100.

Part 2(C)

Provide a narrative statement on any significant reductions, to be implemented under the agreement, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant reduction and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the reduction. The narrative statement for part 2(C) of this section shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in the amount of vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement. For purposes of this part, a significant reduction refers to the removal from a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant reduction excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar or greater capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade.

Part 2(D)

Excluding those changes already reported in part 2(C) of this section, provide a narrative statement on any other significant changes, implemented under the agreement during the preceding calendar quarter, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels or vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change was implemented, it shall be noted with the term "none'' in response to part 2(D) of this section.

Part 3

Provide a narrative statement on any significant changes, implemented under the agreement during the calendar quarter, in the number of vessel calls at a port for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change was implemented, it shall be noted with the term "none'' in response to part 3 of this section.

Section II

Section II applies to agreements, identified in 46 CFR 535.702(a)(2), where the parties to the agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: a) the discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 6 of this section.

Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

Part 2

1. For the preceding calendar quarter, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of "sub-trade'' under the procedures described in 46 CFR 535.705. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than

the port ranges defined herein. The Commission will also consider whether the alternative definition of "sub-trade'' requested by the waiver application is reasonably consistent with the definition of "sub-trade'' applied in the original Information Form for the agreement.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Part 3

1. For the preceding calendar quarter, provide each party's total liner revenues in the entire geographic scope of the agreement, total liner cargo carried in the entire geographic scope of the agreement, and average revenue. For purposes of this Report, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues in the entire geographic scope divided by its total cargo carried in the entire geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, each party shall report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(A)

For the preceding calendar quarter, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that fall under the agreement. For purposes of this Report, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

Part 4(B)

For the preceding calendar quarter, provide the cargo volume and revenue results for each party for each of the major commodities listed in part 4(A) of this section, corresponding to the same unit of measurement used. For purposes of this Report, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 4(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 4(A) of this section, it shall be noted by using a zero for that party in response to part 4(B) of this section.

Part 5(A)

For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that falls under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

Part 5(B)

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 5(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that falls under the agreement, carried on any vessel space counted under part 5(A) of this section, divided by its total vessel capacity as defined and derived in part 5(A) of this section, which quotient is multiplied by 100.

Part 5(C)

Provide a narrative statement on any significant changes in the amount of vessel capacity that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change would exclude instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels and vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change occurred during the calendar quarter, it shall be noted with the term "none'' in response to part 5(C) of this section.

Part 6

Provide a narrative statement on any significant changes in the number of vessel calls at a port that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change occurred during the calendar quarter, it shall

be noted with the term "none'' in response to part 6 of this section.

Section III

Section III applies to all agreements identified in 46 CFR 535.702(a). Parties to such agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part 1(B)

A representative of the parties shall sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

Privacy Act and Paperwork Reduction Act Notice

1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984, 46 U.S.C. app. § 1714. The submission of this form is mandatory for parties to agreements that contain certain authorities.

2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072–0045.

3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 63.5 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.

4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001; or by e-mail *secretary@fmc.gov.*

FMC Form–151 OMB Control No. 3072–0045

FEDERAL MARITIME COMMISSION
MONITORING REPORT FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

Section I

Part 1

Agreement Name: _____

FMC Number: _____

Part 2 Vessel Capacity and Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel capacity [TEUs or other units]	(B) Utilization [percent]
Carrier A [Name]:		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc.		
Carrier B:		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant reductions in vessel capacity to be implemented (submit statement no later than 15 days after a reduction has been agreed upon but prior to the implementation of the reduction): _____

(D) Narrative statement on other significant changes in vessel capacity implemented during the calendar quarter: _____

Part 3 Vessel Calls

Narrative statement on significant changes in vessel calls implemented during the calendar quarter: _____

Section II

Part 1

Agreement Name: _____

FMC Number: _____

Part 2 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	TEUs [or other units]	Percent
Agreement Market Share:		
Line A [Name]	X,XXX	XX

	TEUs [or other units]	Percent
Line B	X,XXX	XX
Line C	X,XXX	XX
Etc. . . .		
Total Agreement	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Etc. . . .		
Total Non-Agreement	X,XXX	XX
Total Trade [or Sub-Trade]	X,XXX	100

Part 3 Total Liner Cargo and Revenues

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

[Name]	Total revenues	TEUs [or other units]	Average revenue
Carrier A	$	X,XXX	$
Carrier B	$	X,XXX	$
Carrier C	$	X,XXX	$
Etc. . . .			

Part 4 Top Liner Commodities

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

[Name]	Carrier A	Carrier B	Etc. . .
Commodity 1 [Name and 4-Digit Code]:			
TEUs [or other units]	X,XXX	X,XXX	
Revenues	$	$	
Commodity 2:			
TEUs	X,XXX	X,XXX	
Revenues	$	$	
Etc. . . .			

Part 5 Vessel Capacity and Utilization

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

	(A) Vessel capacity [TEUs or other units]	(B) Utilization [percent]
Carrier A [Name]:		
Liner Service 1 [Name]	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc.		
Carrier B:		
Liner Service 1	XX,XXX	XX
Liner Service 2	XX,XXX	XX
Liner Service 3	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant changes in vessel capacity that occurred during the calendar quarter: _____

_____

Part 6 Vessel Calls

Narrative statement on significant changes in vessel calls that occurred during the calendar quarter: _____

_____

_____

Section III

Part 1 Contact Person and Certification

(A) Person(s) To Contact Regarding Monitoring Report.
(1) Name _____
(2) Title _____

(3) Firm Name and Business _____

(4) Business Telephone Number _____

(5) Fax Number _____

(6) E-Mail Address _____

(B) Certification.

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____

Relationship with parties to agreement _____

Signature _____

Date _____

By Order of the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–24438 Filed 11–3–04; 8:45 am]

BILLING CODE 6730–01–P

Federal Register

Thursday,
November 4, 2004

Part IV

Department of Housing and Urban Development

Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4936–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2004

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2004, and ending on June 30, 2004.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2004.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from April 1, 2004, through June 30, 2004. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both §§ 58.73 and 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report before the next report is published, the next updated report (which will be for the period July 1, 2004 through September 30, 2004) will include these earlier waivers that were granted, as well as those that occurred during April 1, 2004, through June 30, 2004.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: October 28, 2004.

Kathleen D. Koch,

Acting General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2004, Through June 30, 2004

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Fair Housing and Equal Opportunity.

III. Regulatory waivers granted by the Office of Housing.

IV. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 92.503(b)(1).

Project/Activity: The City of Amarillo, Texas, requested a waiver of the HOME Program repayment requirement for foreclosed properties, as established at 24 CFR 92.503(b)(1).

Nature of Requirement: Section 92.503(b)(1) requires the grantee to repay funds when invested in a homebuyer project that does not meet the affordability requirement for the period specified in 24 CFR 92.254 of the HOME regulations.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: May 19, 2004.

Reasons Waived: Participating jurisdictions have very limited ability to prevent foreclosures of owner-occupied properties. The City of Amarillo was unaware that its program design potentially obligated it to repay all or a portion of the HOME funds that it provided to a homebuyer in the event of foreclosure, requiring the city to make such repayments for properties under its original program design would constitute a hardship. The potential hardship to the city justified good cause for granting the waiver.

Contact: Virginia Sardone, Office of Affordable Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–2470.

II. Regulatory Waivers Granted by the Office of Fair Housing and Equal Opportunity

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 135.38.

Project/Activity: City of Watsonville, California, Public Parking Facility and Community Planning and Development funded assistance.

Nature of Requirement: The work to be performed under a contract for this project, which funded by HUD assistance, is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 in section 3 of HUD's regulations in 24 CFR part 135. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very-low income persons, particularly persons who are recipients of HUD assistance for housing. Section 135.38 of HUD's regulations requires all section 3 contracts to include a clause that reflects compliance with section 3.

Granted by: Carolyn Y. Peoples, Assistant Secretary for Fair Housing and Equal Opportunity.

Date Granted: April 5, 2004.

Reason Waived: The City of Watsonville, a Community Development Block Grant (CDBG) entitlement city was in jeopardy of losing $2.75 million dollar grant from the United States Department of Commerce's Economic Development Administration (EDA) for a public parking structure in downtown Watsonville. This was an issue because EDA took the position that the inclusion of the section 3 clause in the construction contracts would conflict with its procurement regulations and stated that it would not approve the City of Watsonville's procurement document if they include the section 3 clause. Because of the exigent circumstances outlined in the waiver request and the considerable harm that would have resulted to the City of Watsonville, the waiver was granted.

Contact: Linda J. Thompson, Director of Office of Economic Opportunity, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000, telephone (202) 708–6385.

III. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project/Activity: United Manor Apartments, Tarboro, NC, Project Number: 053–35018.

Nature of Requirement: Section 5.801 governs the submission of the financial statements for multifamily properties receiving HUD assistance.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2004.

Reason Waived: The property was under construction with a certificate of occupancy anticipated for June 2004. The submission of the Fiscal Year 2003 financial statement was waived because the property was not in operation during that fiscal year.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 236.725(e)(2).

Project/Activity: Oakview Apartments, Millville, NJ, Project Number: 031–001N1.

Nature of Requirement: Section 236.725 limits the term of the rental assistance contract to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2004.

Reason Waived: The regulation was waived because it was determined that the project could be maintained as an affordable housing resource to the maturity date of the non-insured Section 236 mortgage plus an additional five years through the execution and recording of a Decoupling Use Agreement.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: Hilltop Gardens, Danville, VA, Project Number: 051–EH162.

Nature of Requirement: Section 290.30(a) requires that HUD-held multifamily mortgages be sold on a competitive basis, except for certain ''negotiated'' sales to state or local governments.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 8, 2004.

Reason Waived: The sale of the note of Roman Eagle Properties, Inc., to Roman Eagle Memorial Home was determined more beneficial to the community than a competitive note sale because it ensures a local, continuing involvement in the facility and would give the residents a greater feeling of stability in that the original sponsor would continue to be very much involved in the property and dedicated to the principles sought in the property when the original financing was secured from HUD in 1991.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limitation imposed on above-market rents (24 CFR 401.600):

FHA Number	Project	City	State
4735109	Bedford Manor Apartments	BATTLE CREEK	MI
5494002	Colony Apts	COLUMBIA	SC
10135343	Creekside Gardens	LOVELAND	CO
8335351	Cumberland Manor Apartments	CUMBERLAND	KY
7135648	Cyril Court Apartments	CHICAGO	IL
4735110	East Glen Apartments	EAST LANSING	MI
5335448	Gateway Village	HILLSBOROUGH	NC
8435256	Granada Villa	BELTON	MO
9135083	Lakeview Apartments	EUREKA	SD
5435475	Lancaster Manor Apartments	LANCASTER	SC
7335444	Laurel Woods Apartments	SOUTH BEND	IN
6435241	Livingston Manor Apartments	DENHAM SPRINGS	LA
5235370	Monterey Apartments	BALTIMORE	MD
5344119	Oak Hill Apartments	WADESBORO	NC
6435243	Oakwood Apartments	LEESVILLE	LA
35168	Parkchester I Apartments	WASHINGTON	DC
9435040	Patterson Place	BISMARCK	ND
10292501	Plaza Apartments	COFFEYVILLE	KS
5435489	Prescott Manor	COLUMBIA	SC
6535026	St. Francis Apartments	MERIDIAN	MS
3435190	Strawberry Patch	WHITEHALL	PA
8635186	Sunset Village Apartments	CLARKSVILLE	TN
11435034	Union Acres Apartments	CENTER	TX
5235362	Upton Druid Apartments	BALTIMORE	MD
12235495	Valley View Apartments	DELANO	CA
1335118	Village Point Apartments	NEW HARTFORD	NY

FHA Number	Project	City	State
8335324	Virginia Apartments	LOUISVILLE	KY
5335371	Virginia Dare Apartments	ELIZABETH CITY	NC
5435499	Winnfield West Apartments	WINNSBORO	SC

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their Federal Housing Administration (FHA) insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limitation imposed on above-market rents (24 CFR 401.600):

FHA Number	Project	City	State
4635374	Addy Square	ADDYSTON	OH
1257295	Aldus I (aka Faile Street)	BRONX	NY
3135233	Aspen Hamilton Apartments	PATERSON	NJ
5235350	Barclay Greenmount	BALTIMORE	MD
6535353	Bennie S. Gooden Estates	CLARKSDALE	MS
4235378	Boardwalk Apartments	CLEVELAND	OH
7135482	Bryn Mawr Apartments	CHICAGO	IL
12235565	Buckingham Apartments	LOS ANGELES	CA
5335452	Carriage House Apartments	ENFIELD	NC
5235359	Charles Landing South	INDIAN HEAD	MD
3335146	Coraopolis Gardens	CORAOPOLIS	PA
6135325	Dempsey Apartments	MACON	GA
1235566	Ellenville Urban Renew Hsg (aka Canal Lock Apts)	ELLENVILLE	NY
7135492	Evergreen Terrace II (aka Buff Plaza)	JOLIET	IL
11435351	Fox Run Apartments	ORANGE	TX
3435194	Freeland III Housing	FREELAND	PA
11435266	Heritage Square	TEXAS CITY	TX
8235231	Hicky Garden Apartments	MARIANNA	AR
1257289	Hunts Point I Rehab Project	BRONX	NY
8735141	Ivy Avenue Apartments	CROSSVILLE	TN
3435201	Lancaster Apartments	LANCASTER	PA
8135187	Lexington Village Apartments	LEXINGTON	TN
5335455	Liberty Village Apartments	LIBERTY	NC
6635161	Lincoln Fields Apartments	MIAMI	FL
11635110	Lintero Apartments	SILVER CITY	NM
8335382	Lynn Acres Apartments	SHELBYVILLE	KY
5335402	Meadow Woods Apartments	FAIRMONT	NC
5435482	Northbridge Court	MONCKS CORNER	SC
11635101	Northgate Village Apartments	FARMINGTON	NM
11335069	River Park Village Apartments	LAMPASAS	TX
8335381	Rivertown Apartments	LOUISVILLE	KY
6335203	The Oaks Apartments	SAINT AUGUSTINE	FL
3335147	Verona Gardens	VERONA	PA
5235367	Windsor Gardens	FREDERICK	MD
7335464	Woodland East Apartments III	MICHIGAN CITY	IN

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 19, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856, extension 3786.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limitation imposed on above-market rents (24 CFR 401.600):

FHA Number	Project	City	State
7135480	325 North Austin Apartments	CHICAGO	IL
2435060	Bartlett Court	LEWISTON	ME
4335289	Beasley Mills Apartments	ATHENS	OH
1635071	Broadway West Broadway	NEWPORT	RI
13344039	Childress Manor	CHILDRESS	TX
4535139	Circle Brook Apartments	COWEN	WV
13335057	Garden Apartments	LUBBOCK	TX
11635104	Gatewood Village Apts.	CLOVIS	NM
6535352	Higgins McLaurin Arms Apartments	CLARKSDALE	MS
1257289	Hunts Point I Rehab Project	BRONX	NY
6235389	Roosevelt Manor	BIRMINGHAM	AL
2332046	St. Alfio's Villa	LAWRENCE	MA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.461.

Project/Activity: The following projects requested waivers to the simple interest requirement on the second mortgage to allow compound interest at the applicable federal rate in 24 CFR 401.461.

FHA Number	Project	City	State
04635113	Washington Park Apartments	CINCINNATI	OH
04235384	The Plaza	TOLEDO	OH

Nature of Requirement: Section 401.461 requires that the second mortgages have an interest rate not more than the applicable federal rate. Section 401.461(b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. The loss would have adversely affected the ability to close the restructuring plan and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest was necessary for the owner to obtain Low Income Housing Tax Credits under favorable terms and in order to maximize the savings to the federal government.

Contact: Dennis Manning, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000 telephone (202) 708–3856.

• *Regulation:* 24 CFR 883.306(b)(1).

Project/Activity: Ashland/Dellwood Apartments, Cambridge, MN, Project Number: MN46–H162—MHFA #80–092.

Nature of Requirement: Section 883.306 restricts distribution on state agency administered Section 8 projects. Section 883.306(b)(1) provides that, for projects for elderly families, the first year's distribution will be limited to six percent on equity.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 10, 2004.

Reason Waived: The Minnesota Housing Finance Agency (MHFA) negotiated and secured from the owner of Dellwood a commitment to remain in the Section 8 program for 10 years beyond its current commitment in return for an adjustment in allowable distribution consistent with that available to smaller projects in the MHFA portfolio. The terms of the Dellwood's negotiations were the same as imposed on the other MHFA bond financed Section 8 assisted projects that were provided a waiver permitting MHFA to continue to collect override and contract administration fees.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: District of Columbia Housing Finance Agency's (DCHFA) Series 1998 and Series 1999 Multifamily Mortgage Revenue Refunding Bonds, Washington, DC.

Nature of Requirement: Part 883 of HUD's regulations in 24 CFR regulates the section 8 housing assistance payments contracts administered by state housing agencies. Under § 883.606(b), an agency administering a contract on newly constructed or substantially rehabilitated units is entitled to a reasonable fee, determined by HUD, provided there is no override on the permanent loan granted by the agency to the owner for a project containing assisted units.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2004.

Reason Waived: HUD overlooked issuance of its waiver of the regulatory prohibition during its review and approval of this transaction. The fee income is used to support the DCHFA's affordable housing programs.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Maine State Housing Authority (MSHA) application for bond refunding proposal and the enforcement of a regulatory prohibition of the collection of both contract administration fees and bond yield override in connection with the same project.

Nature of Requirement: Part 883 of HUD's regulations in 24 CFR regulates the section 8 housing assistance payments contracts administered by state housing agencies. Under § 883.6.6(b), an agency administering a contract on newly constructed or substantially rehabilitated units is entitled to a reasonable fee, determined by HUD, provided there is no override on the permanent loan granted by the agency to the owner for a project containing assisted units.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2004.

Reason Waived: HUD neglected to issue a waiver of the regulatory prohibition during its review and approval of this transaction. The fee income is used to support the HFA's affordable housing programs.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: NCR of Harborcreek, Harborcreek, PA, Project Number: 033–EE105/PA28–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Wofford Park, Hattiesburg, MS, Project Number: 065–HD029/MS26–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Neumann Senior Housing, Philadelphia, PA, Project Number: 034–EE118/PA26–S011–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 8, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Arcadia Commons, Albany, GA, Project Number: 061–EE110/GA06–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: East Pittsburgh Commons, East Pittsburgh, PA, Project Number: 033–HD077/PA28–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Garrett Road Apartments, Monroe, LA, Project Number: 064–HD070/LA48–Q021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hoover Supportive Housing Development, Hoover, AL, Project Number: 062–HD041/AL09–Q981–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 14, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain the funds through other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Independent Living Horizons VIII, Augusta, GA, Project Number: 061–EE112/GA06–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 16, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: West Kingsbridge Senior Housing, New York—Bronx, NY, Project Number: 012–EE212/NY36–S961–030.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: West Brighton Seniors, Brighton, NY, Project Number: 014–EE206/NY06–S011–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Franklin Street Residence, Westfield, MA, Project Number: 023–HD187/MA06–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 28, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Spruce Landing, Kansas City, MO, Project Number: 084–HD036/MO16–Q01–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 28, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Brush Hill, Yarmouth, MA, Project Number: 023–HD182/MA06–Q011–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 30, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ASI—Fargo, Fargo, ND, Project Number: 094–HD009/ND99–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Westover Cove, Alvin, TX, Project Number: 114–HD026/TX24–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jubilee House, Wellesley, MA, Project Number: 023–HD159/MA06–Q991–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Presbyterian Oaks II, Talladega, AL, Project Number: 062–EE054/AL09–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Village Woods II, York, ME, Project Number: 024–EE065/ME36–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mystic Valley Elder Services, Wakefield, MA, Project Number: 023–EE158/MA06–S021–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Dominic Place, New Iberia, LA, Project Number: 064–EE140/LA48–S021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Genesee, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: American Training, Inc., North Andover, MA, Project Number: 023–HD189/MA06–Q021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Central Middlesex Association for Retarded Citizens (CMARC), Woburn, MA, Project Number: 023–HD186/MA06–Q021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Family Services of Western Pennsylvania GLI, Sarver, PA, Project Number: 033–HD063/PA28–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Creative Living, Andover, MA, Project Number: 023–HD174/MA06–Q011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 19, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Chestnut Park Apartments, Norfolk, NE, Project Number: 103–HD028/NE26–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Turning Point, Inc., Salem, MA, Project Number: 023–HD183/MA06–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: BCARC Home IV, Inc., Palm Bay, FL, Project Number: 067–HD086/FL29–Q011–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bishop B. Martin Senior Housing, Brooklyn, NY, Project Number: 012–EE323/NY36–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hall Commons, Brigeport, CT, Project Number: 017–Ee063/CT26–S001–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Whalley Avenue Housing II, New Haven, CT, Project Number: 017–HD031/CT26–Q011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Peaks Island VOA Elderly Housing, Peaks Island, ME, Project Number: 024–EE–58/ME36–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Pathways Vision, Greenwich, CT, Project Number: 017–HD022/CT26–Q9981–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lincoln Senior Housing, Derby, CT, Project Number: 017–EE069/CT26–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 4, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Woodside Village VI, Oak Bluffs, MA, Project Number: 013–EE162/MA06–S021–013.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 16, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lee Central School Elderly Housing, Lee, MA, Project Number: 023–EE163/MA06–S021–014.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: John Marvin Tower, Augusta, ME, Project Number: 025–EE067/ME36–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Salvation Army Missoula Silvercrest, Missoula, MT, Project Number: 093–EE010/MT99–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 24, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Stillwater Heights, Burrillville, RI, Project Number: 061–EE049/RI43–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 29, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources, and there were increased costs associated with required design features since the project is located next to the National Register Historic district.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lincoln Street Apartments, Marlboro, MA, Project Number: 023–HD162/MA06–Q991–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Promise Project, Ellenwood, GA, Project Number: 061–EE098/GA06–S001–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Johnnie B. Moore Towers, Atlanta, GA, Project Number: 061–EE094/GA06–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cornhill Apartments, Rochester, NY, Project Number: 014–HD099/NY06–Q001–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 6, 2004.

Reason Waived: Additional time was needed due to delays resulting from the Phase II Environmental Site Assessment, and additional time was needed to submit and review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kona Group Home (FKA Molokai Group Home), Kaunakakai, HI, Project Number: 140–HD028/HI10–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 6, 2004.

Reason Waived: Additional time was needed to locate a site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Ridge, Middletown, CT, Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 6, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Daisy House, Rochester, NY, Project Number: 014–EE208/NY06–S011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 7, 2004.

Reason Waived: Additional time was needed for the sponsor to secure secondary financing and to make the site environmentally acceptable.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bruch Hill Residences, Yarmouth, MA, Project Number: 023–HD182/MA06–Q011–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: Additional time was needed to resolve title issues and to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemlock Nob Estates, Tannersville, NY, Project Number: 014–EE209/NY06–S011–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: Additional time was needed for the sponsor to complete its documentation for firm commitment and to proceed to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Francis Cabrini Gardens, Coram, NY, Project Number: 012–EE288/NY36–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: Additional time was needed for the sponsor to revise the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street,

SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Westmoreland Apartments, Huntington, WV, Project Number: 045–EE017/WV15–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 9, 2004.

Reason Waived: Additional time was needed to finalize the cost with the contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Brighton Seniors, Brighton, NY, Project Number: 014–EE206/NY06–S011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 16, 2004.

Reason Waived: Additional time was needed for the National Environmental Policy Act (NEPA) review process to be completed, which is required by the state.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gulfport Manor (Stephen's Country Village, Gulfport, MS, Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: Additional time was needed to revise plans and cost factors, and to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa at Marion Park, Akron, OH, Project Number: 042–EE112/OH12–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: Additional time was needed due to local opposition at several sites and to submit a firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: McTaggert I, Stow, OH, Project Number: 042–HD089/OH12–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 22, 2004.

Reason Waived: Additional time was needed due to local opposition at several sites and to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Dina Titus Estates, Las Vegas, NV, Project Number: 125–HD069/NV25–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2004.

Reason Waived: Additional time was needed to prepare the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North End New Bedford Elderly Housing, New Bedford, MA, Project Number: 023–EE129/MA06–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Positively 3rd Street, New York, NY, Project Number: 012–EE287/NY36–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: Additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: PSCH—Cypress Housing, Queens, NY, Project Number: 012–HD088/NY36–Q981–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: Additional time was needed to prepare the closing documents and to secure necessary supplemental funding from the New York State Office of Mental Health (NYSOMH).

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Union County Supportive Living, Westfield, NJ, Project Number: 031–HD127/NJ39–Q011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: Additional time was needed to locate an alternate site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victory House at Palmer Park, Palmer Park, MD, Project Number: 000–EE056/MD39–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 3, 2004.

Reason Waived: Additional time was needed for the Sponsor/Owner to seek additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Balsam Lake Disabled Housing, Balsam Lake, WI, Project Number: 075–HD069/WI39–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 4, 2004.

Reason Waived: Additional time was needed to obtain approval on the site drainage plan from the county.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Closter Independent Living, Closter, NJ, Project Number: 031–HD126/NJ39–Q011–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: Additional time was needed for local approvals.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Options Middlesex, Old Bridge, NJ, Project Number: 031–HD111/NJ39–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: Additional time was needed to locate an alternate site and to address deficiencies to the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Options Siek Road, Butler, NJ, Project Number: 031–HD110/NJ39–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: Additional time was needed to secure an alternative site and a different housing consultant.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Delran Consumer Home, Delran, NJ, Project Number: 035–HD046/NJ39–Q001–015.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: Additional time was needed to obtain an approvable site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hunterdon Consumer Home, East Amwell, NJ, Project Number: 031–HD121/NJ39–Q001–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2004.

Reason Waived: Additional time was needed for the sponsor to seek an alternative site, replace the engineer, and seek secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Windham Willows, Windham, NY, Project Number: 014–EE210/NY06–S011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 6, 2004.

Reason Waived: Additional time was needed to obtain approval of the storm water drainage play from the New York State Department of Engineering and to complete documentation for the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Independence II Consumer Home, Mount Laurel, NJ, Project Number: 035–HD048/NJ39–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2004.

Reason Waived: Additional time was needed to submit and review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope VII Consumer Home, Sussex, NJ, Project Number: 031–HD130/NJ39–Q011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2004.

Reason Waived: Additional time was needed for the sponsor to locate an alternative site and revise the drawings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fayette Hills Unity, Oak Hill, WV, Project Number: 045–HD033/WV15–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemet Ability First, Hemet, CA, Project Number: 122–HD130/CA16–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2004.

Reason Waived: Additional time was needed to locate an alternative site and to seek additional financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NCR of North Fairmount, Cincinnati, OH, Project Number: 046–EE056/OH10–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2004.

Reason Waived: Additional time was needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: David Coleman Homes, Marion, SC, Project Number: 054–HD095/SC16–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 17, 2004.

Reason Waived: Additional time was needed to process the initial closing package.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Burbank Accessible Apartments, Burbank, CA, Project Number: 122–HD133/CA16–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2004.

Reason Waived: Additional time was needed to secure the building permit, conducted by the city's building department, which resulted in a delay of the issuance of the building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Center on Halsted, Chicago, IL, Project Number: 071–HD122/IL06–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2004.

Reason Waived: Additional time was needed to seek additional financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Northwood Elderly Housing, Northwood, NH, Project Number: 024–EE064/NH36–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: Additional time was needed due to litigation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Walter Riley Davis Senior Complex, Milwaukee, WI, Project Number: 075–EE115/WI39–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: Additional time was needed for the Owner to cure deficiencies in and for HUD to review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Winchester Senior Housing, Elko, NV, Project Number: 125–EE118/NV25–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 26, 2004.

Reason Waived: Additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope VI Consumer Home, Roxbury, NJ, Project Number: 031–HD128/NJ39–Q011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2004.

Reason Waived: Additional time was needed to review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fairham Homes (AKA Hamilton Plaza), Middletown, OH, Project Number: 046–HD025/OH10–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2004.

Reason Waived: Additional time was needed for the owner to cure deficiencies in the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harmony Village Apartments, Detroit, MI, Project Number: 044–EE076/MI28–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2004.

Reason Waived: Additional time was needed to review the closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: PSCH—Ozone Park Residence, Ozone Park, NY, Project Number: 012–HD100/NY36–Q001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 2, 2004.

Reason Waived: Additional time was needed to finalize closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Sherman Apartments, Aurora, IL, Project Number: 071–HD121/IL06–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 7, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Christian Life Retirement Center V, Elgin, IL, Project Number: 071–EE165/IL06–S011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2004.

Reason Waived: Additional time was needed due to a change of site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: SHDC No. 3—Kamaoa Road Group Home, Na'alehu, HI, Project Number: 140–HD024/HI10–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 16, 2004.

Reason Waived: Additional time was needed for the sponsor to seek additional financing sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Peaks Island VOA Elderly Housing, Peaks Island, ME, Project Number: 024–EE058/ME36–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 29, 2004.

Reason Waived: Additional time is needed to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harvard Square, Irvine, CA, Project Number: 143–HD011/CA43–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2004.

Reason Waived: Additional time was needed to resolve funding issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: NCR of Harborcreek, Harborcreek, PA, Project Number: 033–E015/PA28–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 1, 2004.

Reason Waived: The project is economically designed and comparable to other similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Tremont Terrace, Ft. Worth, TX, Project Number: 113–HD018/TX21–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to work with the company that has receivership of the adjacent property to obtain easement rights, and to work with the City of Fort Worth's attorney about the plat issues and correct language for the easement.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Grand Street Settlement Senior Housing, New York, NY, Project Number: 012–EE279/NY36–S991–019.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 8, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: La Casa de Felicidad, Bronx, NY, Project Number: 012–EE271/NY36–S991–011.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area.The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Woodlands Supportive Housing, The Woodlands, TX, Project Number: 114–HD020/TX24–Q011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and and additional time was needed to issue a firm commitment and prepare for final closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Spruce Landing, Kansas City, MO, Project Number: 084–HD036/MO16–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 28, 2004.

Reason Waived: The project is economically designed and comparable to other similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed during the platting of the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Unity Gardens Senior Apartments, Windham, ME, Project Number: 024–EE053/ME36–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 30, 2004.

Reason Waived: The project is economically designed and comparable to other similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources. Also, the project encountered delays due to the processing requirements of the Maine State Housing Authority and the various layers of funding involved in the project development.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: South Hampton Road, Amesbury, MA, Project Number: 023–HD179/MA06–Q011–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2004.

Reason Waived: The project is economically designed and comparable to other similar projects developed in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to secure a new site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Proctor Avenue Residence, Revere, MA, Project Number: 023–HD153/MA06–Q991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 19, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from outside sources. Also, the project was delayed due to an identity of interest involving the architect and the original general contractor, and the project's development director had to be replaced.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Westland Terrace Program, Haverhill, MA, Project Number: 023–HD163/MA06–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to other similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to secure a different consultant and general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Woodside Village V, Oak Bluffs, MA, Project Number: 023–EE138/MA06–S011–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to issue the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Woodside Village IV, Oak Bluffs, MA, Project Number: 023–EE119/MA06–S001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 16, 2004.

Reason Waived: The project is economically designed, comparable in cost to similar projects developed in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to issue the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Sycamore Place II Senior Apartments, Brentwood, CA, Project Number: 121-EE154/CA39-S011–014.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 22, 2004.

Reason Waived: The project is economically designed and comparable to other similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources and additional time was needed to issue the firm commitment application and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: PSCH-Cypressx Housing, Queens, NY, Project Number: 012–HD088/NY36–Q98–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 24 months.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 30, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor exhausted all efforts to obtain additional funding from other sources, and additional project cost was associated with an increase in the cost of construction and Davis-Bacon wage rates. Also, additional time was needed to complete the closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Immanuel Courtyard IV, Omaha, NE, Project Number: 103–EE029/NE26–S301–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 20, 2004.

Reason Waived: The sponsor proposed to physically attach the subject project to other, previously funded projects, which would permit the subject project to share in the existing community space.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Harford Village, Harford, PA, Project Number: 034–EE075.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 17, 2004.

Reason Waived: The project is located in a rural section of northern Pennsylvania. Over a 24-month period, the property reflected only six months with 100 percent occupancy, and the owner anticipated two additional vacancies within the next month. Further, the occupancy level would not support the complex and, without the waiver, early mortgage default was considered certain.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: John Davis Manor Apartments, Patterson, AR, Project Number: 082–EE096.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2004.

Reason Waived: The owner had difficulty in renting the project's units. The waiver helped alleviate occupancy and financial problems at the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 2598.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: River Cliff Manor, Inc., Judsonia, AR, Project Number: 082–EE108.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 15, 2004.

Reason Waived: The owner had difficulty in renting the project's units. The waiver helped alleviate occupancy and financial problems at the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Aspen Grove Apartments, Hines, OR, Project Number: 126–EE040.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 16, 2004.

Reason Waived: The owner had difficulty renting the project's units. The waiver helped alleviate occupancy and financial problems at the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

IV. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Roberts Village-Bowling Green, phase III rental, called Marshall Manor III and Bowling Green III, HOPE VI Project A36URD006I100, Norfolk, VA.

Nature of Requirement: Section 941.610(a)(1)–(a)(7) requires that HUD review and approve certain legal documents and evidentiary materials relating to mixed-finance development before closing can take place and funds can be released.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 14, 2004.

Reason Waived: The waiver was approved in order to streamline the review and approval process, to reduce duplicate review, and to expedite closing. The waiver was approved because (1) the Norfolk Redevelopment and Housing Authority (NRHA) will submit documentation which certifies to the accuracy and authenticity of the subject evidentiary materials, (2) NRHA is a high performing housing authority with extensive affordable housing development and mixed-finance experience, (3) the subject mixed-finance development involves Low Income Housing Tax Credits, Federal Home Loan Bank Affordable Housing Program funds, and Norfolk City development funds, all of which have extensive review and financial control mechanisms and, (4) Marshall Manor III and Bowling Green III are near duplicates of Marshall Manor II and Bowling Green II, which were reviewed and approved by HUD and which have the same developer, the same investor, and the same financial structure.

Contact: Milan Ozdinec, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20510–5000, telephone (202) 401–8812.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Woodbridge Senior Enhanced (formerly Jeffries Homes) HOPE VI Project MI28URD001I194/Detroit, MI.

Nature of Requirement: This regulatory section requires that if the partner or owner entity or any other entity with an identity of interest with such parties wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 25, 2004.

Reason Waived: The waiver was approved in order for Damone Construction to complete the Senior Enhanced Apartments. The Detroit Housing Authority (DHC) submitted an independent third party cost estimate for the work to be performed by Damone Construction, which totaled $11,046,371.48. DHC also submitted the construction contract with Damone Construction, which totaled $10,602,057.20, thus satisfying HUD's condition that the construction contract is less than or equal to the independent cost estimate.

Contact: Milan Ozdinec, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20510–5000, telephone (202) 401–8812.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Burlington Housing Authority (BHA), Burlington, VT. The BHA requested a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant who suffers from severe neck and spinal injuries.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 29, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher participant and his family to continue to live in the 3-bedroom house that they rented before he became disabled and could no longer work.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.207(b)(3) and 983.3(a)(2).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA. The SFHA requested a waiver of a selection preference regulation in order to select Housing Opportunities for Persons with AIDS (HOPWA) eligible families to occupy seven units that will receive PBA at Mission Creek Apartments and a waiver regarding the availability of vouchers for project-based assistance so that it could enter into an agreement to enter into a housing assistance payments contract (AHAP) for the same project.

Nature of Requirement: Section 982.207(b)(3), which governs tenant selection under the project-based voucher program, states that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for persons with a specific disability. Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project based housing assistance payments (HAP) contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an AHAP.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 12, 2004.

Reason Waived: Approval to waive selection preference requirements was granted since seven units in this project were developed with HOPWA funds and none will receive rental or operating subsidy under the HOPWA program. Since by law persons with HIV/AIDS only may occupy units developed with HOPWA funds, a public housing agency may only authorize occupancy of such units that also receive PBA by persons with HIV/AIDS. The requirement to have vouchers available at the time of execution of an AHAP was waived since the SFHA reported that it had a turnover of approximately 23 vouchers per month. That coupled with the 97 available vouchers at the time of the waiver request indicated that the SFHA would have sufficient voucher unit months to meet its contractual obligation for 88 units at Mission Creek Apartments when the housing assistance payments contract is executed in September 2005.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and

Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.151(c).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA. The SFHA requested a waiver of the regulation so that it could renew a project-based certificate (PBC) housing assistance payments (HAP) contract for the 381 Turk Street project beyond the expiration date of the Annual Contributions Contract (ACC) since funding increments are only renewed for three-month periods.

Nature of Requirement: 24 CFR 983.151(c) requires that, with HUD field office approval, and at the sole option of the public housing agency (PHA), PHAs may renew expiring HAP contracts for such period or periods as the HUD field office determines appropriate to achieve long-term affordability of the assisted housing, provided that the term does not extend beyond the ACC expiration date for the funding source. PHAs must identify the funding source for renewals. Different funding sources may be used for the initial term and renewal terms of the HAP contract.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 28, 2004.

Reason Waived: Approval was granted to allow the SFHA to provide rental assistance at this facility up to the maximum 15 years allowed under the PBC HAP contract without having to request HUD field office approval to do so every three months.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c) and Section II.E. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: East St. Louis Housing Authority (ESLHA), East St. Louis, IL. The ESLHA requested a waiver of competitive selection of owner proposals and deconcentration requirements to permit it to attach PBA to nine units at Central City Apartments.

Nature of Requirement: Section 983.51(a), (b) and (c) require competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II.E. of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 28, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it underwent a competitive process and was awarded Low Income Housing Tax Credits through the Illinois Housing Development Authority. An exception to the deconcentration requirements was granted since the Emerson Park neighborhood, in which the project will be located, has been targeted for redevelopment by the city and private investors. The Pfizer/Elemetus Company has built a $2.5 million office complex for regional staff. The Metro Link light rail system has developed two stations containing retail and small businesses. The Emerson Park Development Corporation recently broke ground for 12 new for-sale single-family market rate units priced between $140,000 and $180,000. There has been a significant decrease in the poverty rate of the census tract over a 10-year period and the housing and commercial activities described above are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Brainerd Housing Authority (BHA), St. Cloud, MN. The BHA requested a waiver of competitive selection of owner proposals to permit it to attach project-based voucher assistance to 6 units at Timberland Townhomes.

Nature of Requirement: Section 983.51(a), (b), and (c) requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section 983.56(c) requires that when the housing agency administering the ACC from which project-based assistance will be provided submits an application, it must then submit all owner applications in response to the advertisement to the HUD field office for review and selection.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 28, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it underwent a competitive process and was awarded Low Income Housing Tax Credits through the Minnesota Housing Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c) and 983.56(c).

Project/Activity: Housing Authority of the City of Tampa (HACT), Tampa, FL. The HACT requested a waiver of competitive selection of owner proposals to permit it to attach project-based voucher assistance to 54 units at Gardens at South Bay.

Nature of Requirement: Section 983.51(a) and (b) requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section 983.56(c) requires that when the housing agency administering the ACC from which project-based assistance will be provided submits an application, it must then submit all owner applications in response to the advertisement to the HUD field office for review and selection.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since the project underwent a competitive process and was awarded bond financing through the Hillsborough County Finance Authority.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.E. and Section II.F. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program Initial Guidance (Initial Guidance).

Project/Activity: Minneapolis Public Housing Authority (MPHA), Minneapolis, MN. The MPHA requested exceptions to the Initial Guidance since Lindquist Apartments is located in a census tract with a poverty rate of 37.1 percent and 10 of the 26 units in the building would have PBA attached.

Nature of Requirement: Section II.E. of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section II.F. requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, HUD Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 7, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the site of Lindquist Apartments is one block north of the city of Minneapolis' designated Empowerment Zone and should derive its benefits. The purpose of establishing empowerment zones is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. These goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. Approval of the exception to exceed the 25 percent cap on the number of units in a building that can have PBA attached was granted since RS Eden will

provide self-sufficiency services. Each resident will be assigned a case manager who will assist the resident in meeting the productivity goal of school or work, maintaining housing and addressing personal or family issues. There will be on-site workshops and a computer resource room available. The supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

Project/Activity: Housing Commission of Anne Arundel County (HCAAC), Glen Burnie, MD. The HCAAC requested a waiver of competitive selection of owner proposals under the project-based program for the Wiley H. Bates project.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 2004.

Reason Waived: Approval to waive competitive selection was granted for the Wiley H. Bates project since the project had undergone a previous federal competition. The project was awarded $818,642 in Low Income Housing Tax Credits through the Maryland Department of Housing and Community Development.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Itasca County Housing and Redevelopment Authority (ICHRA), Grand Rapids, MN. The ICHRA requested a waiver of competitive selection of owner proposals to permit it to attach project-based voucher assistance to 5 units at Oakwood Terrace III.

Nature of Requirement: Section 983.51(a), (b) requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy and § 983.56(c) requires that when the housing agency administering the ACC from which project-based assistance will be provided submits an application, it must then submit all owner applications in response to the advertisement to the HUD field office for review and selection.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it underwent a competitive process and was awarded Low Income Housing Tax Credits through the Minnesota Housing Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Mankato Economic Development Agency (MEDA), Mankato, MN. The MEDA requested a waiver of competitive selection of owner proposals to permit it to attach project-based voucher assistance to five units at Dublin Road Townhomes.

Nature of Requirement: Section 983.51(a), (b) requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy and § 983.56(c) requires that when a the housing agency administering the ACC from which project-based assistance will be provided submits an application, it must then submit all owner applications in response to the advertisement to the HUD field office for review and selection.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it underwent a competitive process and was awarded Low Income Housing Tax Credits through the Minnesota Housing Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.E. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested an exception to the Initial Guidance since Leland Apartments is located in a census tract with a poverty rate of 23.4 percent.

Nature of Requirement: Section II.E. of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 1, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located in the Broadway-Lawrence Tax Increment Financing (TIF) District. These districts are part of an initiative used by local government to promote economic development by providing incentives for businesses and residents to improve communities. Leland Apartments was allocated $2,010,000 in TIF funds. Economic activity in this TIF district included a new Borders Book Store and a new Starbucks. Residential development included two condominium developments of 40 and 37 units, respectively, that have a combination of market rate and affordable for sale units. The decrease in the poverty rate of the census tract over a ten-year period and the housing and commercial activities are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Clay County Housing and Redevelopment Authority (CCHRA) and Moorhead Public Housing Agency (MPHA), Clay County, MN. The CCHRA and MPHA jointly requested a waiver of competitive selection of owner proposals to permit them to attach project-based voucher assistance to a combined 38-unit project (an 8-unit of supportive housing project and a 30-unit town house project).

Nature of Requirement: Section 983.51(a) and (b) requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy, and Section 983.51(a) requires that when a the housing agency administering the ACC from which project-based assistance will be provided submits an application, it must then submit all owner applications in response to the advertisement to the HUD field office for review and selection.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 29, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since the combined 38-unit project underwent a competitive process and was awarded Low Income Housing Tax Credits through the Minnesota Housing Finance Agency.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.E. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Albany Housing Authority (AHA), Albany, NY. The AHA requested an exception to the Initial Guidance since Creighton Storey Homes is located in a census tract with a poverty rate of 26 percent.

Nature of Requirement: Section II.E. of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 15, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is located in an area designated as the South End Revitalization Plan. Over $69 million of development activity financed by the Department has taken place in the past two years or is currently underway. Some of these activities include the reconstruction of South Pearl Street, the renovation of Lincoln Park Pool, the construction of a new parking garage, the demolition of two long-vacant AHA high rises, and the renovation or new construction of over 400 housing units. Approximately two-thirds of the development dollars support non-housing activities. In addition, a new convention center is planned for the downtown area, just a few blocks from the South End that will generate jobs and economic opportunities. These renovation and new development activities are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.F. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Malden Housing Authority (MHA), Malden, MA. The requested an exception to the Initial Guidance for the Cross Street Housing Project to permit the MHA to attach PBA to more than 25 percent of the units in the building.

Nature of Requirement: Section II.F. requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, HUD Headquarters is authorizing implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 12, 2004.

Reason Waived: Approval to waive the 25 percent cap on the number of units in a building that can have PBA attached was granted for the Cross Street Housing project since the scope of the supportive services focused on economic self-sufficiency and included job-training, pre-employment counseling, linkage with GED classes, as well as linkage to day care for children to support job training and job opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Akron, OH, Metropolitan Housing Authority. A request was made to permit the Authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimated that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Akron Metropolitan Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 5, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Akron Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its performance funding system (PFS) calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director; Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Brunswick, GA, Housing Authority. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimated that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Brunswick Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 12, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Brunswick Housing Authority requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Oklahoma City, OK, Housing Authority. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimated that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Oklahoma City Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary of Public and Indian Housing.

Date Granted: April 12, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Oklahoma City Housing Authority requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Albuquerque, NM, Housing Authority. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing

authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Albuquerque Housing Authority has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary of Public and Indian Housing

Date Granted: April 12, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Albuquerque Housing Authority requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Dauphin, PA. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimated that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Dauphin has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary of Public and Indian Housing

Date Granted: June 14, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Dauphin requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of the County of Santa Barbara, CA. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimated that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, the Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Housing Authority of the County of Santa Barbara has resident-paid utilities.

Granted by: Michael Liu, Assistant Secretary of Public and Indian Housing.

Date Granted: June 18, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Housing Authority of the County of Santa Barbara requested a waiver based on the same approved methodology. The waiver would permit the housing authority to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, extension 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135, telephone (202) 708–4932.

• *Regulation:* 24 CFR 1000.312.

Project/Activity: The Hopi Tribal Housing Authority's request that certain U.S. Housing Act of 1937 (1937 Act) units continue to be included as formula current assisted stock (FCAS) under the Indian Housing Block Grant (IHBG) Program after they have been demolished and replaced using non-1937 Act funds.

Nature of Requirement: The regulation at § 1000.312 establishes that current assisted stock consist of housing units owned or operated pursuant to an Annual Contributions Contract (ACC) under management as of September 30, 1997, as indicated in the formula response form (FRF).

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2004.

Reason Waived: The units were found to have structural deficiencies that rendered them unsuitable for habitation and would require extensive remediation before they would meet minimum standards for safe, decent and sanitary housing. The Hopi Tribal Housing Authority indicated that they would enforce with the homebuyers the original terms and conditions of the Mutual Help and Occupancy Agreements (MHOA) once the units have been replaced.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1625.

• *Regulation:* 24 CFR 1000.312.

Project/Activity: The Kootenai Tribe of Idaho's request that certain U.S. Housing Act of 1937 (1937 Act) units continue to be included as FCAS under the IHBG Program after they have been replaced using non-1937 Act funds.

Nature of Requirement: The regulation at § 1000.312 establishes that current assisted stock consist of housing units owned or operated pursuant to an ACC under management as of September 30, 1997, as indicated in the FRF.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2004.

Reason Waived: The Kootenai Tribe of Idaho completed two homes of equivalent size and quality for owners that were initially determined not FCAS eligible because they did not met the low-income eligibility requirements of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. The replacement homes were constructed solely with tribal funds. The Tribe has executed MHOAs with two income-eligible families for the replacement units.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202–5733, telephone (303) 675–1625.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of Winston-Salem (HAWS), Winston-Salem, NC. The HAWS requested an exception to the Initial Guidance since 29 of the 72 units in Kimberly Park Terrace III will have PBA attached.

Nature of Requirement: Section II.F. requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until

regulations are promulgated regarding the category of families receiving supportive services, HUD Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 28, 2004.

Reason Waived: Approval of the exception to exceed the 25 percent cap on the number of units in a building that can have PBA attached was granted since through partnerships developed in conjunction with the development of a HOPE VI Community and Supportive Services plan, the following supportive services were available to all the families living in the development: job training, placement and retention; childcare, education; and transportation. The partners include: Winston-Salem Urban League; Goodwill Industries; Winston-Salem/Forsyth County Workforce Development Board; Northwest Child Development Council; Department of Social Services; Forsyth Technical Community College; Winston-Salem Forsyth County Schools; and Winston-Salem Transit Authority. The supportive services were consistent with the statute.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.E. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Connecticut Department of Social Services (DSS), Hartford, CT. The DSS requested an exception to the initial guidance for two units in the Riverplace Commons Condominiums located in New Haven, CT. The condominiums are located in a census tract with a poverty rate greater than 20 percent.

Nature of Requirement: Section II.E. of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the area of the city where the units would be located is currently undergoing a tremendous economic redevelopment and revitalization effort. There are several housing initiatives underway in the area. For example, the New Haven Housing Authority is planning to rebuild a public housing project with a $20 million HOPE VI grant. Additionally, a blighted public housing complex has been torn down and plans are underway to develop new housing opportunities. More than $500 million in state and federal funds have been targeted for the Front Street area where the Riverplace Condominiums are located.

The city of New Haven has begun over a dozen urban development projects that will create jobs in the area in which the proposed project-based units will be located. Specifically, the city, acting through its Development Commission, is involved in a comprehensive revitalization program for the neighborhood. The plan proposes the redevelopment of significant vacant land and building spaces for new light industrial and manufacturing uses, and the development of a waterfront park.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II.E. of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Albany Housing Authority (AHA), Albany, NY. The AHA requested an exception to the initial guidance since DePaul Residence is located in a census tract with a poverty rate of 26 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted by: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 8, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project is in a New York State-designated Empire Zone. These zones were created in 1986 to stimulate economic growth. Through a variety of financial incentives and economic development benefits, the program was designed to both help existing businesses expand and attract new businesses from outside the state or new start-up ventures. Toward that end, a $400 million investment by the state of New York and the semi-conduction industry went into the development of SEMATECH NORTH. The facility is located at University of Albany-SUNY that is located two miles from DePaul Residence. It was completed in 2003 and created 500 new jobs. Early in 2004 Governor Pataki announced plans for a new college program at the university that will train Albany residents for jobs at SEMATECH NORTH. The significant investment into the local colleges and their related activities to job creation at the SEMATECH NORTH facility were consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

[FR Doc. 04–24583 Filed 11–3–04; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday,
November 4, 2004

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

Hazardous Materials: Miscellaneous Changes to the Hazard Communication Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[RSPA–03–15327 (Docket No. HM–206B)]

RIN 2137–AD28

Hazardous Materials: Miscellaneous Changes to the Hazard Communication Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to improve hazard communication for hazardous materials transported in commerce. Revisions adopted in this final rule include: permitting the use of the Pantone Formula, an industry guide for colors, for hazard warning labels and placards; expanding the use of labels specified in the Compressed Gas Association Pamphlet C–7 on cylinders used to transport Division 2.1, 2.2, or 2.3 gases to all modes of transportation; requiring a NON–ODORIZED marking on certain cylinders, portable tanks, cargo tanks, and tank cars and multi unit tank car tanks containing unodorized liquefied petroleum gas; and allowing a FUMIGANT marking to be removed from a transport vehicle or freight container before the lading is unloaded if the vehicle has undergone sufficient aeration. Taken together, the revisions in this final rule will enhance hazard communication for the safe handling of hazardous materials in transportation and the prompt identification of hazardous materials involved in transportation incidents.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–8553.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2005.

Voluntary Compliance Date: RSPA is authorizing voluntary compliance with the amendments adopted in this final rule beginning December 6, 2004.

SUPPLEMENTARY INFORMATION:

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I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include a wide variety of hazard identification and communication requirements for hazardous materials transportation. Generally, the HMR require packages of hazardous materials to be marked with the shipping name and identification number of the material contained in the package, and to display hazard warning labels. Placards and other markings must be affixed to a transport vehicle or bulk packaging containing hazardous materials. Hazardous materials must be described on a shipping paper that accompanies the shipment. The shipping paper or an associated document must contain emergency response information and the shipping paper must include an emergency response telephone number that is monitored at all times the material is in transportation. This telephone number is used by emergency responders to obtain detailed, product-specific information that includes guidance for the initial actions to be taken in the event of an incident. These requirements are designed, in part, to provide fire and emergency response personnel, transport workers, and the public with information in the event of a transportation incident involving the hazardous materials. The hazard communication and emergency response information requirements are set forth in subparts C through G of part 172 of the HMR. The hazard communication system in the HMR is generally consistent with international standards for hazardous materials transportation.

On June 11, 2003, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM; 68 FR 34880) proposing a number of changes to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. The NPRM was based on several petitions for rulemaking, requests for clarification, and RSPA initiatives, and included clarifications and improvements to the shipping paper, identification number and other marking, labeling and placarding, and emergency response telephone number requirements.

Emergency responders must know how to react appropriately in emergency situations in order to coordinate response actions that will protect human life and property. The changes to the hazard communication requirements adopted in this final rule will result in better response by, and protection of, emergency response personnel, fire or police personnel, and the general public. In addition, some of the changes adopted in this final rule will provide the regulated industry with additional flexibility to meet hazard communication requirements, thus reducing compliance burdens. Taken together, the amendments adopted in this final rule will help shippers and carriers to ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

II. Summary of Regulatory Changes

In this final rule, we are adopting the following revisions to the HMR:

- Permitting the use of Pantone® Formula, an industry guide for colors, for hazard warning labels and placards.
- Expanding the use of labels specified in the Compressed Gas Association Pamphlet C–7 on cylinders used to transport Division 2.1, 2.2, or 2.3 gases to all modes of transportation.

• Requiring a NON–ODORIZED marking on certain packages containing unodorized liquefied petroleum gas.

• Allowing a FUMIGANT marking to be removed from a transport vehicle or freight container before the lading is unloaded provided the vehicle or freight container has undergone sufficient aeration.

• Clarifying that beeper or other types of call-back systems do not meet the requirements in § 172.604 for emergency response telephone numbers.

• Clarifying that international shipments of Class 9 materials may utilize the placarding exception for Class 9 materials while the shipment is being transported in the United States.

• Clarifying that a return shipment of a package that contains less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation and transported with markings and placards in place.

• Clarifying emergency response information and training requirements for combustible liquids.

We are not adopting provisions proposed in the NPRM concerning the design of poison-by-inhalation labels and placards, the use of retro reflective materials for certain placards, marking requirement for shipments of temperature-controlled Type B organic peroxides, and the organic peroxide subsidiary FLAMMABLE LIQUID label.

III. Comments Made to the NPRM

RSPA received approximately 19 written comments to the NPRM from trade associations, including the American Chemistry Council, Compressed Gas Association, National Propane Gas Association, National Pest Management Association, American Society of Safety Engineers, American Petroleum Institute, Association of American Railroads, American Trucking Associations, The Conference on Safe Transportation of Hazardous Articles, Inc., Commercial Vehicle Safety Alliance, and the International Vessel Operators Hazardous Materials Association, Inc.; chemical manufacturers; shippers and carriers of hazardous materials; and The Georgia Department of Motor Vehicle Safety. Overall the commenters support the regulatory amendments, clarifications, and transitional provisions in the NPRM because the actions will clarify several confusing regulations, assist shippers and carriers with hazardous materials compliance, and enhance hazard communication and emergency response. Several commenters raised concerns about certain provisions in the proposals. Relevant portions of these comments are discussed in detail in the following sections of this preamble.

IV. Marking Requirements

A. NON–ODORIZED Marking on Certain Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gases (§ 172.301; 172.326; 172.328; and 172.330)

Liquefied petroleum gases include butane, isobutane, propane, propylene (propene) butylenes (butenes), and any mixtures of these hydrocarbons. These gases are flammable, colorless, noncorrosive, and nontoxic. They are easily liquefied under pressure at ambient temperature, and are shipped and stored as liquids. They are largely used in gaseous and liquid form as fuels in many diverse applications. The gases are also denoted by the terms LP–Gas or LPG.

In the NPRM, we proposed to require a NON–ODORIZED marking on certain cylinders, portable tanks, cargo tanks, and tank cars and multi unit tank car tanks containing Liquefied petroleum gas (LPG). There is a requirement in § 173.315(b)(1) for LPG to be odorized in portable tanks and cargo tanks, unless odorization would be harmful to any further processing of the LPG. However, there are no odorization requirements in the HMR for LPG in cylinders or tank cars, nor in communicating the lack of odorization of LPG during transportation. Between 1978 and 1980, we received several petitions requesting updating of the LPG odorization requirements contained in the HMR; these petitioners requested that the HMR require LPG to be odorized in transportation or the lack of odorization to be visually communicated. In a July 1978 Report to Congress on Liquefied Energy Gases, the General Accounting Office of the Comptroller General of the United States (GAO) recommended that vehicles transporting LPG display a sign indicating whether or not the LPG being transported was odorized.

There currently is no requirement in the HMR for shippers to provide an indication as to whether the LPG being transported is odorized. The proposal stemmed from our concern that the lack of a warning that the material contained in the package was not odorized could cause emergency responders to make inappropriate decisions in mitigating an accident, potentially jeopardizing their safety or the public safety. Of the nine comments received on this issue, only one commenter opposes the NON–ODORIZED marking provisions.

The Association of American Railroads (AAR), the American Society of Safety Engineers (ASSE), the Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA), the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA), Compressed Gas Association (CGA), Diversified CPC International (Diversified), Matheson Tri Gas (Matheson), and Praxair support RSPA taking action to require shippers to indicate when they are shipping non-odorized propane. The AAR agrees that the concern that emergency response personnel may overlook the possibility of a leak of non-odorized propane because of an expectation that any leak would have a detectable odor is well founded, since most shipments of propane contain an odorant. The ASSE states that the current lack of this additional hazard warning information could trigger inappropriate decisions by emergency responders, threatening their safety and that of the public community during incident control. In addition, VOHMA, CGA, and COSTHA state that shipping paper entries should also include the entry ''Non-Odorized'' so that carriers as well as emergency responders will be aware of and benefit from this additional information if an incident occurs involving unodorized LPG. AAR notes that, because markings may be obscured or damaged in a derailment or accident, adding a notation to shipping papers will help ensure that emergency responders will be informed if a shipment of unodorized propane is involved in an accident.

We agree with commenters that a shipping paper entry would provide additional information for carriers and emergency responders about the nature of the material being transported. However, such a revision to the HMR would impose additional costs on shippers and transporters; moreover, this revision was not proposed in the NPRM. Therefore, we are not making this change in the final rule. Shippers may include on shipping papers the information that a shipment is not odorized if they so choose.

Matheson Tri Gas asks for clarification as to whether the requirement for marking LPG as odorized pertains to LP–Gas mixtures. In addition, Matheson and Diversified CPC International, Inc. (Diversified) request that the marking ''NOT ODORIZED'' be permitted in place of or in addition to the proposed NON–ODORIZED marking. Diversified states that many of its cargo tanks are already marked as NOT ODORIZED in accordance with NFPA 58 LPG standard which requires all ASME storage containers (National Fire Protection Association's NFPA 58 Liquefied Petroleum Gas Code, Section 2.2.6.5)

that contain unodorized LPG products to be marked ''NOT–ODORIZED''. The marking NON–ODORIZED will apply to LPG and LP–Gas mixtures described as ''Liquefied Petroleum Gas'' or ''Petroleum Gases, Liquefied'' or Butane, Isobutane, Propane, Propylene (Propene) Butylene (Butenes) that, when mixed with other constituents, retain the LPG shipping name(s) and are not described using an ''n.o.s.'' description. Because the marking ''NOT ODORIZED'' is already required under the NFPA 58 LPG Code for storage purposes, for purposes of transportation in commerce, either ''NON–ODORIZED'' or ''NOT ODORIZED'' is an acceptable marking to communicate that the LPG is being shipped unodorized.

The American Petroleum Institute (API) opposes the NON–ODORIZED marking provision on tank cars transporting LPG. API expresses concern with the logistics of tracking the tank cars and scheduling the stenciling, inspecting the cars to make sure they are properly stenciled, and the potential for creating errors and inconsistencies between the bills of lading, the markings, and the placards. API also states that remarking the cars may be dangerous to the personnel who are climbing up and down ladders to re-stencil the cars every year. One API member estimates that stenciling changes would occur approximately 5,800 times per year at a cost of approximately $80 per car ($30.00 per car for stenciling + $47 per car to affix = $80) for a total of $464,000 annually to comply with the proposed requirement. API suggests that the NON–ODORIZED marking should not be applicable to tank cars.

We do not agree with the API comment. We agree with petitioners and with GAO that, because transport workers and emergency response personnel rely on an odor to indicate the presence of LPG, emergency response and transport workers could make inappropriate decisions during an incident unless information concerning odorization is available, potentially jeopardizing their safety or the public safety. We note concerning the comments on stenciling that neither the NPRM nor this final rule specify the type of marking that must be used to comply with the requirement. Shippers may use non-permanent marks, such as pressure-sensitive vinyl or adhesive-backed labels, that would obviate the need to re-stencil railcars to indicate the presence of a non-odorized shipment. The annual cost of this marking, using pressure-sensitive vinyl labels that have a 5- to 7-year life expectancy, is minimal.

To address the concerns expressed by API, in this final rule, we are adopting a provision to permit the NON–ODORIZED marking to be used on rail tank cars that transport both unodorized and odorized LPG. The NON–ODORIZED marking will alert emergency responders that the tank may contain unodorized LPG; in the event the LPG in the tank is, in fact, odorized, emergency responders will know to take appropriate actions even though the tank car indicates that the contents may not be odorized. Accordingly, we are amending §§ 172.203, 172.301, 172.326, 172.328, and 172.330 to require the NON–ODORIZED or NOT ODORIZED marking on a vehicle or, unless excepted, a container containing LPG that does not contain an odorant. In this final rule, the compliance date for the new marking requirement is October 1, 2006.

B. Type B Organic Peroxide Identification Number Marking (§ 172.336)

A Division 5.2 placard is required for (1) any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled material, and (2) for other organic peroxides when 1,001 pounds or more are on a transport vehicle. In the NPRM, we proposed to require an identification number to be displayed on each bulk packaging, unit load device, freight container, transport vehicle, or rail car containing any quantity of an organic peroxide when the material transported is a temperature-controlled organic peroxide subject to placarding under Table 1 of § 172.504(e).

Of the four comments received on this issue, only one commenter supports the proposal. The American Society of Safety Engineers (ASSE) agrees that it would be beneficial to require display of the identification number on bulk packages, freight containers, vehicles and rail cars to indicate that the organic peroxide is temperature controlled. ASSE says that including an identification number will increase the likelihood that appropriate actions will be taken to ensure safety, even if shipping papers for the cargo are not readily available in an emergency situation.

The commenters opposed to this provision believe that the current requirement to placard any amount of ''5.2, Organic peroxide, Type B, liquid or solid, temperature-controlled'' material conveys the warning to emergency personnel that the material must be temperature controlled, and clearly identifies the organic peroxides requiring special response needs based on temperature controls. The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) suggests that an emergency responder responding to an incident involving a Class 5.2 placard should always assume that the cargo should be protected from a rise in temperature since virtually all organic peroxides may undergo exothermal release of oxygen or instability and many are flammable. COSTHA further states that such an identification number display will cause confusion, particularly in international commerce. COSTHA notes that under international codes the display of an identification number for a Class 5.2 material is required only for a bulk packaging or a shipment of 4000 kg or more loaded at one location with no other hazardous materials in the container or transport unit. COSTHA asserts that seeing the identification number displayed as proposed might lead to an erroneous conclusion and improper response. The American Trucking Associations (ATA) opposes this provision because temperature-controlled organic peroxides represent a small percentage of the cargo transported by motor carriers. Drivers are thus not likely to see this material with any regularity. In ATA's view, this lack of familiarity will make the proposed requirement difficult to comply with; moreover, according to ATA, motor carriers may choose not to accept these materials for transportation. ATA is further concerned that it will be difficult to train drivers to distinguish between organic peroxides that do not require the identification marking and those that do.

We have reconsidered this proposal in light of the comments we received. We agree that the placard currently required for Type B, organic peroxide shipments and the required shipping paper entry that indicates that the material is temperature-controlled and provides the emergency temperature should be sufficient in most situations to alert emergency responders to the hazard associated with the material in the event of an incident that results in loss of temperature control. We also agree that the requirement as proposed could cause confusion for international shipments. We note, in addition, that there are other types of hazardous materials that require temperature controls during transportation; we may need to consider a more general marking requirement for all such materials than was proposed in the NPRM. Therefore, we are not adopting the proposal in this

final rule. However, we may address this issue in a future rulemaking.

C. Fumigant Marking (§ 173.9)

A rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, is a ''package'' containing a hazardous material, unless the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety. If the contents of a transport vehicle or freight container have been treated with any material or are undergoing fumigation, the transport vehicle and freight container must be marked in accordance with § 173.9(c). The requirements apply to fumigation with any material, including unlisted fumigants, and in all modes of transportation. This marking provides warning to shippers, carriers, law enforcement agencies, and, in particular, transport workers that they may be exposed to a fumigating agent when they open a transport unit. The NPRM proposed to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated load is unloaded or has undergone sufficient aeration to remove the hazard posed by the fumigant. The proposed revision permits aeration or ventilation of the vehicle or container without unloading.

Three comments were received to the NPRM regarding the fumigation proposals. All three commenters support the proposal. Two commenters suggest that, in order to clarify when a fumigated transport vehicle or freight container is no longer deemed to present a hazard to those entering the vehicle or container, we adopt language that reflects the text of the current UN Model Regulations and the IMDG Code. We agree; therefore, in this final rule, the word ''or'' replaces the word ''and'' in the current paragraph (e)(1), and paragraph (e)(2) is revised for consistency with the text of the current UN Model Regulations and the IMDG Code. This revision will allow removal of the FUMIGANT marking following aeration or ventilation of the vehicle or container sufficient to eliminate the fumigant hazard, and also makes the requirements consistent with international standards.

The National Pest Management Association (NPMA) expresses concern about application of the FUMIGANT marking requirement to ready-to-use liquid formulations or ''foggers,'' such as ant and roach repellants. NPMA said RSPA is encouraging fumigators to improperly mark packages, an action that may unnecessarily delay emergency workers' response to an accident. This comment is beyond the scope of this rulemaking.

V. Materials Poisonous by Inhalation (PIH)

A. Revision of PIH Label and Placard and Transition Periods (§§ 172.332; 172.416; 172.429; 172.540 and 172.555)

In a final rule published January 8, 1997 (62 FR 1217), we adopted new labels and placards for both liquids (Division 6.1) and gases (Division 2.3) that are materials poisonous by inhalation (PIH) to enhance their identification when transported in commerce. The dark background for the skull-and-crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The PIH label and placard also improved hazard communication by creating an instantly recognizable difference between PIH materials and other poisons.

However, as published in the **Federal Register**, the graphics shown in the January 8, 1997 final rule and amendments adopted in a July 22, 1997 final rule were inaccurate. On the PIH label and placard, we inadvertently specified a smaller skull-and-crossbones symbol in the upper black diamond than currently shown on the POISON label and placard. To correct this oversight, we proposed in the NPRM to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull-and-crossbones symbol at the top of the labels and placards to conform, pictorially, in size with the symbol on the POISON label and placard used for poisons other than those that are PIH materials. Increasing the size of the symbol will make the upper black diamond on the PIH placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Because of the enlarged upper black diamond above the horizontal center line and, proportionally, the skull-and-crossbones symbol at the top of the PIH placards, identification number markings displayed on the new PIH placards may cause overlapping of the lower point of the upper black diamond and impinge on space used for identification number display on such placards. To allow space for the identification number, we proposed allowing the lower point of the upper black diamond to impinge on space used to display an identification number marking on a PIH placard. An extensive transition period was also proposed to allow those persons who had begun, prior to October 1, 1999 and October 1, 2001, respectively, to use and maintain a supply of the PIH labels and placards with smaller size symbols to continue to use them in transportation.

We received approximately 10 comments on these proposals. Most commenters supported the proposed changes, but questioned the timing of the proposals in light of security concerns and non-uniformity with the international standards. The following comment from PRAXAIR is typical:

> While supportive of the need to communicate the special hazards posed by materials classified as Poison Inhalation Hazard materials, PRAXAIR questions the necessity for the proposed increases in the size of PIH labels. Since October 1, 2001, RSPA has required and Praxair complied with the requirements to use a PIH label and placard for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials. DOT has gone to considerable length to create unique labels and placards. The pictograms for PIH materials are unique and their size does not, in our judgment, need to be increased in order to improve their ability to communicate hazards. Furthermore, these labels and placards are unique to the transportation system in the USA and have not been adopted by the international transportation community. These labels and placards have become recognized by the emergency response community in the USA. PRAXAIR believes that the current labels and placards are distinctive and that an increase in the size of the upper quadrant of labels and placards is unnecessary because these labels are unique. The need to change a system for international shipment of PIH materials seems premature.

We agree. Therefore, we are not adopting the NPRM proposals concerning the PIH labels and placards in this final rule.

We note concerning the transportation of PIH materials that RSPA and the Transportation Security Administration are examining the need for enhanced security requirements for the rail transportation of hazardous materials that pose a toxic inhalation hazard. In a notice published August 16, 2004 (69 FR 50987), the two agencies are seeking comments on the feasibility of initiating specific security enhancements and the potential costs and benefits of doing so. Security measures being considered include improvements to security plans, modification of methods used to identify shipments and communicate hazards, enhanced requirements for temporary storage, strengthened tank car integrity, and implementation of tracking and communication systems.

B. Hydrogen Fluoride, Anhydrous, and Similar Materials (§§ 172.400 and 172.504)

In the HM–206 final rule (62 FR 1217; January 8, 1997), certain materials that meet the definition of a PIH material, such as hydrogen fluoride, anhydrous, were not specifically addressed in the provisions for labeling and placarding PIH materials in Division 6.1. To correct this oversight, in the NPRM we proposed to revise §§ 172.400 and 172.504 to require an inhalation hazard label or placard for materials that meet the definition of a PIH material in § 171.8. We received one comment supporting the action to correct this oversight. The proposal in the NPRM is adopted without change in this final rule.

C. Placarding Requirement for Residues (When PIH Subsidiary)

In accordance with § 173.29(c), a non-bulk packaging containing only a residue of a hazardous material covered by placarding Table 2 of § 172.504 of the HMR need not be included in determining the applicability of the placarding requirements in subpart F of part 172 and is not subject to shipping paper requirements when collected and transported by a contract or private carrier for reconditioning, remanufacture or reuse. However, the exception in § 173.29(c) was not intended to apply to the residue of a material shipped in non-bulk packagings that has a subsidiary PIH hazard that would require the transport vehicle to be placarded in accordance with the subsidiary placarding requirements in § 172.505(a). Therefore, in the NPRM, we proposed to revise paragraph (c) of § 173.29 to clarify that the exception to placarding and shipping papers do not apply to a non-bulk packaging containing the residue of a material poisonous by inhalation. Two comments were received supporting this clarification. The proposal is adopted without change in this final rule.

VI. Other Requirements for Labels and Placards

A. Color Standards for Labels and Placards (§§ 171.7, 172.407 and 172.519)

The NPRM contained a proposal for use of Pantone® Matching System (PMS) colors as an alternative to the specifications for colors in the Tables in Appendix A of part 172 of the HMR. The proposed alternative color standards for labels and placards conform generally to the same standards prescribed in the TDG Regulations, which are colors conforming to the Pantone® Color Formula Guide published by Pantone Incorporated (Pantone®). The colors that make up the PMS are derived from 14 base colors. Ink manufacturers license the formulation from Pantone® and printers mix of the 14 ink colors make up the entire spectrum of PMS. This provision is primarily intended to voluntarily permit the use of certain Pantone® Color Formula Guide colors for identification number and other markings and hazard warning labels and placards as an alternative to the Munsell notations, by referencing certain Pantone® Color Formula Guide numbers as a convenience to users, not as a requirement.

We received two comments, both in support of this provision. Monsanto Company (Monsanto) supports RSPA's efforts since Pantone® is the printing color standard. Monsanto recommends that a delta ''E'' value be added to color deviation from the Pantone® standard color, and that most color definitions include an ''error'' tolerance value, especially when they refer to using color measuring instruments or a spectrophotometer because Pantone® books vary based upon age and environmental conditions. Further, Monsanto recommends that the DOT colors be defined within the ''Cyan-Magneta-Yellow-Black (CMYK)'' color space or tolerance set to include colors reproduced using the process colors. CMYK is a color model in which all colors are described as a mixture of these four process colors. CMYK is the standard color model used in offset printing for full-color documents, and because such printing uses inks of these four basic colors, it is often called four-color printing.

In this final rule, the Pantone® Matching System is a voluntary alternative to the Munsell Notations, and the Pantone® Formula Guide colors are specified and do not allow for deviations or tolerances (ranges of color). It is our understanding that the specified DOT colors do not render well when emulated using CMYK color space. A spectrophotometer or other instrumentation would be required to ensure a proper match with the DOT color standards. The use of CMYK colors for hazard warning labels and placards and other markings was not proposed in the NPRM, and is beyond the scope of this rulemaking. At this time, we have not determined whether or not CMYK colors would be an acceptable alternative to the use of the Munsell Notations. The commenter may wish to submit a petition for rulemaking requesting a change to the regulations in accordance with §§ 106.95 and 106.100.

In this final rule, we are revising §§ 172.407 and 172.519, specifications for labels and placards, to provide an alternative means of achieving reasonable conformance to color standards for hazard warning labels and placards, and identification number and other markings.

B. ASTM D4956–95 (Red and White) For Reflective Colors (§§ 171.7, 172.407 and 172.519)

In accordance with the provisions in § 172.519(a)(3), reflective materials may be used on a placard if the prescribed colors, strengths, and durability are maintained. In the NPRM, we proposed to adopt an alternate color standard for labels and placards constructed of retro reflective materials. We focused on retro reflective red and white reflective colors that conform to Type V sheeting in ASTM D 4956, Standard Specification for Retroretroflective Sheeting for Traffic Control. We did not propose other colors in ASTM D 4956 because we believed they poorly match the current and proposed color standards for labels and placards. This standard is referenced in the conspicuity systems prescribed under the Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment specified in 49 CFR 571.108.

We received two comments on our proposal. 3–M Traffic Control Division (3–M) supports the proposal, stating that the use of retro reflective materials can greatly increase the visibility of placards when viewed by a first responder in the dark, and Type V materials are most often used as white and red conspicuity treatments to improve the visibility of trucks at night. Further, the color of retro reflective signing governed by the Federal Highway Administration is based on the same Munsell System and Color Tolerance Charts currently referenced by RSPA. However, 3–M notes that Type V materials are intended only for nighttime use. Because placards are viewed under both daytime and nighttime conditions, 3–M suggests language that would allow placards to be made from durable materials used for rigid highway signs. 3–M also recommends that placards made from Type VII, VIII, or IX sheeting would be comparable in nighttime brightness to Type V and provide daytime luminance sufficient for signing purposes in the daytime.

Based in part on the 3–M comment and on our own evaluation of the standards for retro reflective materials, we have decided not to adopt the NPRM proposal in this final rule. We will continue to evaluate retro reflective materials to ascertain their suitability

for use on placards and may address this issue in a future rulemaking.

C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label (§ 172.402)

Under the HMR, the additional labeling requirements in § 172.402 require each package containing a hazardous material to be labeled with both primary and subsidiary hazard warning labels. In accordance with § 172.402(a)(2), a package containing a Division 5.2 (organic peroxide) material that also meets the definition of a Class 3 (flammable liquid) material must be labeled ORGANIC PEROXIDE and FLAMMABLE LIQUID, except for Class 3 material in Packing Group III (see exception in § 172.402(a)(2)). Paragraph 5.2.2.1.10 of the UN Model Regulations specifies that a subsidiary FLAMMABLE LIQUID label is not required on such a package because the ORGANIC PEROXIDE label is understood to convey the inherently flammable nature of organic peroxides. In the NPRM, we proposed to grant an exception from subsidiary labeling for a Division 5.2 (organic peroxide) material that exhibits a Class 3 (flammable liquid) subsidiary hazard, for consistency with the UN Model Regulations.

We received two comments in support of the proposal. However, we are not adopting the proposed exception at this time. The UN is currently considering introduction of a new Division 5.2 label to better differentiate between the Division 5.1 and 5.2 labels. A proposal to this effect has been submitted to the UN Committee of Experts. We will address labeling issues related to Division 5.2 materials after the UN has finalized action on modified labeling requirements for organic peroxides, in order to maintain consistency and harmonization with the UN.

D. Cylinder Markings in Accordance With CGA Pamphlet C–7 (§ 172.400a)

Currently, the HMR allow the use of ''neckring'' markings, instead of labels, on cylinders containing certain compressed gases (*i.e.*, Division 2.1 or Division 2.2) carried by private or contract motor carriers if certain conditions as prescribed in § 172.400a(a)(1) are met. In the NPRM, for consistency with provisions in the UN Model Regulations and Canadian and European regulations, we proposed revising the requirement in § 172.400a(a)(1) to broaden this labeling exception to apply to all modes of transportation (air, water, rail, or highway), and to expand the exception to include gases in Division 2.3. Specifically, this change will permit the use of the markings specified in Compressed Gas Association (CGA) Pamphlet C–7, ''Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A,'' to satisfy the labeling of cylinders containing gases shipped in accordance with the exception in § 172.400a.

We received five comments on this issue. All are generally supportive of the proposed revision, except that two of the commenters oppose expanding the exception to include Division 2.3 (poison gas) gases. These commenters state that any material with either a primary or subsidiary hazard of Division 2.3 should be required to bear the full-sized toxic or poison gas label, and note that neckring markings are often abraded, torn, and faded from frequent use and handling of the cylinders to which they are attached. We do not agree. Cylinder neckring markings are less subject to abrasions than cylinder body labels and are less likely to loosen and fall off. Further, the smaller neckring markings affixed to the shoulder of cylinders are more visible when cylinders are grouped together than when the information is on a hazard warning label affixed to the cylinder wall. Experience shows that this alternative marking, currently authorized for cylinders carried by private and contract carriers, clearly communicates the degree of hazard associated with Class 2 gases offered for transportation in commerce. The neckring marking will also not detract from a common carrier's ability to segregate and stow cylinders since cylinders shipped individually must be moved individually by employees who are close enough to read the smaller neckring marking and hazard warning label. In addition, the proper shipping name and identification number of the hazardous material are marked adjacent to the smaller neckring marking and hazard warning label, which makes identification of the products easier.

We believe such markings will be comparably effective in communicating the hazard of the material being shipped. Safety will not be reduced because shipping papers and placards on the transport vehicles provide hazard warning information that can be used in the event of an emergency. Paragraph 5.2.2.2.1.2 of the UN Model Regulations specifies that cylinders for Class 2 may, on account of their shape, orientation and securing mechanisms for transport, bear labels representative of those specified in this section, which have been reduced in size, according to ISO 7225 ''Gas cylinders—Precautionary labels,'' for display on the non-cylindrical part (shoulder) of such cylinders. Thus, this change will enhance international harmonization with the Canadian and European standards, which authorize labels that have been reduced in size (*e.g.*, neckring labels) for display on the non-cylindrical part of the cylinders.

Accordingly, in this final rule, § 172.400a(a)(1) is revised to allow labels authorized in CGA Pamphlet C–7, Appendix A, for Division 2.1, 2.2, or 2.3 gases. We are rewording the provisions to clarify that a Dewar flask is authorized only for atmospheric gases under the conditions prescribed in § 173.320. Because we are expanding use of the marking on cylinders and Dewars for poisonous materials and in all modes of transportation and cylinders of Division 2.3 gases, we are removing paragraphs (a)(1)(i) and (ii).

E. Placarding Exception for Class 9 Materials (Domestic) (§ 172.504)

In the NPRM, we proposed to clarify that the Class 9 placarding exception in § 172.504(f)(9) applies to international shipments of Class 9 materials while moving in the United States. For those portions of transportation that occur within the borders of the United States, a shipment in international transportation is eligible for the same placarding exceptions that apply to transportation that is domestic only.

We received three comments on this issue: two opposed, and one in support of the clarification. Air Products, Inc. supports the proposal because the clarification will minimize misunderstanding. The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) and the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) oppose the clarification. COSTHA states that extending the exception to international shipments in cargo transport units will result in confusion and non-compliance. COSTHA is concerned that the amendment to § 172.504(f)(9) would not prevent an intermodal carrier from removing the CLASS 9 placards and thus place the container in non-compliance when it arrives at the port. COSTHA suggests that requiring the placard to be displayed throughout transportation in accordance with the IMDG Code will reinforce a shipper's responsibility for providing and affixing placards at the beginning of transportation and for intermodal carriers to maintain the placards until the shipment reaches the port. VOHMA states that in order to avoid inconsistency between §§ 171.12,

172.504, and 172.506, the language at § 172.504(f)(9) should not be amended and that the current exception be limited to domestic shipments only.

We do not agree. This action is being taken to clarify and incorporate into the HMR our longstanding determinations concerning the intent and use of the CLASS 9 placard when the shipment is passing through the United States and destined for a foreign country, such as Canada. For these purposes, we have previously defined ''domestic transportation'' to include not only transportation exclusively within the United States, but also that domestic portion of international transportation (such as Class 9 shipments to or from Canada by highway and rail), that occurs between places within the United States. We do not agree that application of the Class 9 placarding exception to shipments passing through the United States will cause confusion and non-compliance nor do we agree that the exception will cause intermodal carriers to remove Class 9 placards on international shipments prior to the shipment's arrival at the port. The exception permits the Class 9 placard to be displayed throughout transportation in accordance with the IMDG Code requirements. The proposal in the NPRM is adopted without change in this final rule.

F. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains (§§ 172.514 and 173.29)

A Class 9 hazardous substance is subject to the HMR only because of the presence of a reportable quantity (RQ) in one package. An empty packaging containing the residue of a Class 9 hazardous substance below its RQ is not subject to the HMR, including shipping paper requirements. In the NPRM, we proposed to revise § 172.514(b) to allow markings and placards, if any, to remain on a packaging, such as a returning rail car, that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

We received three comments on this issue, all supporting the revision. Therefore, in this final rule, we are clarifying that a packaging, such as a tank car, containing less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation as a regulated material if the residue of this material is offered for transportation with all applicable hazard warning marks, placards and shipping papers. Accordingly, § 172.514(b) is revised and § 173.29(h) is added to allow the markings and placards, if any, to remain on a returning rail car that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

G. Footnote to Table 1 (Placards)—Editorial Correction (§ 172.504(e))

In this final rule, an editorial revision is made in § 172.504(e), Table 1, to correct citations in Footnote 1, pertaining to placarding for certain shipments of radioactive materials. The footnote is corrected to read as follows: ''RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(4) and (5) or (c) of this subchapter.'' (*See* Docket HM–230, Final Rule; 69 FR 3676; January 26, 2004.)

VII. Training and Emergency Response Information

A. Emergency Response Telephone Number Requirements (§ 172.604)

The HMR require a person offering a hazardous material for transportation to provide an emergency response telephone number (including the area code or international access code) on the shipping paper for use in the event of an emergency involving the material. The emergency response telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the hazardous material being shipped. As an alternative, the number may be of a person who has ''immediate access'' to a person who possesses such information. The emergency response telephone number must be monitored at all times for as long as the hazardous material is being transported, including during storage incidental to the movement of the hazardous material. Storage that is incidental to movement generally is storage that occurs between the time a hazardous material is offered for transportation and the time it reaches its destination and is delivered to the consignee. In the NPRM, we proposed to clarify the emergency response telephone number requirements to specify that call-back systems (*e.g.*, beepers, answering machines, etc.) are not acceptable under the HMR.

We received five comments, four in support of the clarification in § 172.604, and one opposed. Typical of those supporting the proposal is the American Chemistry Council (ACC):

ACC has long understood DOT's intent that the number shown on the shipping papers should connect the caller directly to an individual with immediate access to information regarding the specific product(s) covered by the shipping papers on which the emergency number appears, or immediate access to a person who possesses such knowledge and information. First responders and those in the transport industry need accurate and immediate information in order to properly mitigate an incident while also protecting those responding to the incident. For this reason, ACC also agrees with DOT that direct landline telephone provides the most reliable destination connection.

Further, it is also understood that some first responders may or may not possess extensive hazardous materials incident emergency response training or experience and may need guidance in identifying what information is needed to take action. For that reason, ACC believes the person answering the emergency telephone should be properly trained and/or have immediate access to trained and hazardous materials qualified individuals that can assist the caller in obtaining the needed information.

The National Propane Gas Association (NPGA) opposes the clarification. NPGA says that retail marketers of propane often utilize devices such as answering services or beepers, and that the added provision would essentially require propane marketer employees to be considered first responders in order to comply with the *immediate access* requirements. Further, NPGA asserts that it believes that the proposal stated in HM–206B does not increase the level of safety in responding to a propane transportation incident, and could place an undue burden on propane marketers, if adopted as stated. NPGA requests that the added statement be withdrawn from consideration.

We disagree. The emergency response telephone number ensures that appropriate response and mitigation information is available to emergency response personnel in the event of an incident, without unnecessary or undue delay. The number must be of a person who has comprehensive emergency response and accident mitigation information or has immediate access to a person who possesses such knowledge. Some shippers have misinterpreted ''immediate access'' as authorizing them to use a ''call-back'' system that requires an emergency responder to wait for a return telephone call. This is not practical since a responder must make quick mitigation decisions at the scene of an incident involving hazardous materials, including propane. Moreover, in a number of letters of clarification issued since adoption of the emergency telephone number requirement, we have stated that ''call-back'' systems do not

meet the requirement for ''immediate access'' specified in the regulation. Therefore, in this final rule, we are revising § 172.604 to indicate that beeper numbers and call-back systems do not conform to the requirements in § 172.604 and are not acceptable under the HMR.

B. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids (§ 173.150)

Under the HMR, a combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant is not subject to the requirements of the HMR except those prescribed in § 173.150(f)(3). Emergency response information and training requirements prescribed in subparts G and H of part 172 of the HMR are currently not specified in the requirements in § 173.150(f)(3). It was never intended to exempt such shipments from these requirements. To correct this oversight, in the NPRM, we proposed to revise § 173.150(f)(3) to clarify that the emergency response information and training requirements apply to a shipment of a combustible liquid in a bulk packaging or to a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant. No comments were received on this issue; therefore, the proposal is adopted without change in this final rule.

VIII. Security Plans Applicable to Select Agents

The NPRM proposed to add a new paragraph (p) to § 172.203 that would require each person who offers for transportation an infectious substance that is regulated as a select agent by the Centers for Disease Control and Prevention of the Department of Health and Human Services to include the words ''select agent'' in association with the basic shipping description on the shipping paper that accompanies the shipment. The proposal was intended to enable carriers to identify select agent shipments that are subject to the security plan requirements in subpart I of part 172 of the HMR.

Of the three comments received on this issue, the American Trucking Associations (ATA) and the American Society of Safety Engineers (ASSE) support the proposals. In ATA's words:

> Following publication of RSPA's final rule requiring motor carriers that transport certain ''select agents'' to develop security plans, ATA raised the issue that motor carriers do not have the ability to determine whether a particular package contains a select agent unless that fact is communicated by the shipper. As such, we applaud RSPA for promptly addressing the issue and proposing to require each person who offers a select agent for transportation to include the words ''Select Agent'' in association with the basic shipping description on the shipping paper that accompanies the shipment.

FEDEX opposes this provision suggesting that identifying shipments as select agents on shipping papers could create a security risk by drawing attention to the shipment. We agree. Also, there are other ways for this information to be communicated, such as by contractual arrangement or prior notification by phone call. The shipper's security plan must address en route security (*see* § 172.802(a)(3) of the HMR). If the shipper is relying on its carrier to handle en route security for the shipment, then the shipper must communicate to the carrier that the shipment is subject to security plan requirements.

The proposal in the NPRM is not adopted in this final rule. We continue to believe, however, that a shipper should communicate that a package contains a select agent to the carrier in order for the carrier to apply security plan measures to the shipment. We encourage shippers to provide this information to carriers. If a carrier is not sure whether a package contains a select agent, the carrier should request this information from the shipper. Although we are not adopting a new notification or paperwork requirement in this final rule, we may address this issue in a future rulemaking.

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The regulated industry may incur minimal costs to comply with the provision of this final rule, most notably the new marking requirements for non-odorized shipments of LPG. We note, however, that many shippers already mark LPG packages and containers ''NOT ODORIZED'' to conform with the NFPA Standard 58 for LPG and, further, that the new marking requirement may be met using an inexpensive pressure-sensitive vinyl or adhesive-backed marking.

The small costs that may be incurred, however, are more than offset by the benefits that will accrue because of the provisions in this final rule that provide the industry with increased flexibility in meeting hazard communication requirements. For example, this final rule expands the current exception for neckring marking of cylinders transported in all modes, permits marking and placards to remain on packagings containing a hazardous substance below its RQ, and provides increased flexibility for use of the FUMIGANT marking. In addition, the final rule will enhance the safe transport of hazardous materials by clarifying the requirements of the emergency response telephone number on shipping papers and the emergency response and training requirements for shipments of combustible liquids in bulk packagings. The compliance costs associated with requirements in this final rule are minimal. Moreover, this final rule should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rule would preempt State, local, and Indian tribe requirements but does not contain any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject items 1, 2, and 3 above and preempts State,

local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. Therefore, the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The changes in this final rule will impose only minimal new costs of compliance on the regulated industry, and may reduce costs of compliance for several provisions, such as not requiring removal of markings and placards on packagings (*e.g.*, returning rail cars) containing a hazardous substance below its reportable quantity (RQ). I hereby certify that while the changes in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

Need for the final rule. We are making changes to the hazard communication requirements in the HMR based on petitions for rulemaking, requests for clarification, and our own determination that clarifications and improvements may be appropriate. This action is being taken to improve safety and enhance emergency response to hazardous materials incidents.

Description of actions. In this final rule, we are amending the HMR to:

—Clarify that beeper numbers and call-back systems that require an emergency responder to wait for a return telephone call do not conform to the requirements for an emergency response telephone number on shipping papers
—Revise certain package marking requirements to more accurately convey information about the material being transported to emergency responders, transport workers, and the general public
—Permit more flexibility in color requirements for placards
—Provide exceptions for the return transportation of rail cars that contain residues of hazardous substances so that placards and required markings need not be removed

In addition, in this final rule, we are making several clarifications and editorial revisions to current hazard communication requirements.

Identification of potentially affected small entities. Businesses likely to be affected by the final rule are shippers and transporters of hazardous materials. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to this final rule are small businesses. For the most part, these entities will incur minimal costs to comply with the changes made in this final rule.

Reporting and record keeping requirements. This final rule does not contain new reporting or record keeping requirements.

Related Federal rules and regulations. With respect to hazard communication requirements for hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazard communication requirements for hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

This final rule was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this final rule. For example, to minimize the burden associated with the new ODORANT marking requirement, we are permitting rail cars in mixed service to be permanently marked and are providing an extended compliance period. Other changes provide clarification of certain provisions to eliminate confusion and enhance compliance. In addition, several exceptions from current requirements to decrease compliance burdens are included in this final rule.

Conclusion. We conclude that, while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. The compliance costs associated with requirements in this final rule are minimal. Moreover, this final rule should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not propose any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The improvements to the hazard communication system in this final rule will have a net positive effect on the environment by improving response to and mitigation of incidents involving hazardous materials in transportation. We have determined that there would be no significant environmental impact associated with this final rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and record keeping requirements.

49 CFR Part 173

Shippers—General requirements for shipments and packagings.

■ In consideration of the foregoing, 49 CFR parts 171, 172 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 1.45 and CFR 1.53; Pub L. 101–410 section 4 (28 U.S.C. 2461); Pub. L. 104–134, section 31001.

■ 2. In § 171.7, in paragraph (b), one new entry is added in alphabetical order to read as follows:

§ 171.7 Reference material.

* * * * *

(b) *List of informational materials not requiring incorporation by reference.*

* * *

Source and name of material	49 CFR reference
* * * * * * *	
Pantone Incorporated, 590 Commerce Boulevard, Carlstadt, New Jersey 07072–3098.	
Pantone® Formula guide coated/uncoated, Second Edition 2004	172.407, 172.519
* * * * * * *	

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 4. In § 172.301, paragraph (f) is added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON–ODORIZED marking on cylinders containing LPG.* After September 30, 2006, no person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, that contains an unodorized Liquefied petroleum gas (LPG) unless it is legibly marked NON–ODORIZED or NOT ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section.

■ 5. In § 172.326, paragraph (d) is added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) *NON–ODORIZED marking on portable tanks containing LPG.* After September 30, 2006, no person may offer for transportation or transport a portable tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON–ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section, or near the placards.

■ 6. In § 172.328, paragraph (e) is added to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(e) *NON–ODORIZED marking on cargo tanks containing LPG.* After September 30, 2006, no person may offer for transportation or transport a cargo tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON–ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name as specified in paragraph (b)(1) of this section, or near the placards.

■ 7. In § 172.330, paragraph (c) is added to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

* * * * *

(c) After September 30, 2006, no person may offer for transportation or transport a tank car or multi-unit tank car tank containing liquefied petroleum gas (LPG) that is unodorized unless it is legibly marked NON–ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (a)(2) of this section, or near the placards. The NON–ODORIZED or NOT ODORIZED marking may appear on a tank car or multi-unit tank car tank used for both unodorized and odorized LPG.

■ 8. In § 172.400, in the table in paragraph (b), the entries for ''6.1'' are revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design section reference
* * *	* * *	*
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.429
6.1 (other than material poisonous by inhalation)	POISON	172.430
* * *	* * *	*

■ 9. In § 172.400a, paragraph (a)(1) is revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter or a cylinder containing a Division 2.1, 2.2, or 2.3 material that is—

(i) Not overpacked; and

(ii) Durably and legibly marked in accordance with CGA Pamphlet C–7, Appendix A (IBR; see § 171.7 of this subchapter).

* * * * *

■ 10. In § 172.407, paragraph (d)(5) is revised and paragraphs (d)(6) and (d)(7) are added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(5) The following color standards in the PANTONE® formula guide coated/uncoated (see § 171.7(b) of this subchapter) may be used to achieve the required colors on markings and hazard warning labels and placards:

(i) For Red—Use PANTONE® 186 U

(ii) For Orange—Use PANTONE® 151 U

(iii) For Yellow—Use PANTONE® 109 U

(iv) For Green—Use PANTONE® 335 U

(v) For Blue—Use PANTONE® 285 U

(vi) For Purple—Use PANTONE® 259 U

(6) Where specific colors from the PANTONE MATCHING SYSTEM® are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation must be used to ensure a proper match with the color standards in the PANTONE® formula guide coated/uncoated for colors prescribed in paragraph (d)(5) of this section. PANTONE® is the property of Pantone, Inc.

(7) The specified label color must extend to the edge of the label in the area designated on each label, except for the CORROSIVE, RADIOACTIVE YELLOW–II, and RADIOACTIVE YELLOW–III labels on which the color must extend only to the inner border.

■ 11. In § 172.504, in Table 1, the entry for ''6.1'' and the footnote are revised; in Table 2, the entry for ''6.1'' is revised; and paragraph (f)(9) is revised, to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
* * *	* * *	*
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.555
* * *	* * *	*

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(4) and (5) or (c) of this subchapter.

TABLE 2

Category of material (hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
* * *	* * *	*
6.1 (other than material poisonous by inhalation)	POISON	172.554
* * *	* * *	*

(f) * * *

(9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in § 171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display

configuration as required by subpart D of this part.

* * * * *

■ 12. In §172.514, paragraph (b) is revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(b) Each bulk packaging that is required to be placarded when it contains a hazardous material, must remain placarded when it is emptied, unless it—

(1) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(2) Is refilled, with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous; or

(3) Contains the residue of a hazardous substance in Class 9 in a quantity less than the reportable quantity, and conforms to § 173.29(b)(1) of this subchapter.

* * * * *

■ 13. In § 172.519, paragraph (d)(3) is revised to read as follows:

§ 172.519 General specification for placards.

* * * * *

(d) * * *

(3) Upon visual examination, a color on a placard must fall within the color tolerances displayed on the appropriate Hazardous Materials Label and Placard Color Tolerance Chart (see § 172.407(d)(4)). As an alternative, the PANTONE® formula guide coated/uncoated as specified for colors in § 172.407(d)(5) may be used.

* * * * *

■ 14. In § 172.604, paragraph (a)(2) is revised to read as follows:

§ 172.604 Emergency response telephone number.

(a) * * *

(2) The telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 15. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

■ 16. In § 173.9, paragraph (e)(1) and (2) are revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

* * * * *

(e) * * *

(1) The fumigated lading is unloaded; or

(2) A fumigated closed transport vehicle or freight container has been completely ventilated either by opening the doors of the transport vehicle or freight container or by mechanical ventilation to ensure no harmful concentration of gas remains after fumigation has been completed.

* * * * *

■ 17. In § 173.29, paragraph (c) introductory text is revised and paragraph (h) is added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) A non-bulk packaging containing only the residue of a hazardous material covered by Table 2 of § 172.504 of this subchapter that is not a material poisonous by inhalation or its residue shipped under the subsidiary placarding provisions of § 172.505—

* * * * *

(h) A package that contains a residue of a hazardous substance, Class 9, listed in the § 172.101 Table, Appendix A, Table I, that does not meet the definition of another hazard class and is not a hazardous waste or marine pollutant, may remain marked, labeled and, if applicable, placarded in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for a hazardous substance.

■ 18. In § 173.150, the section heading is revised, and in paragraph (f)(3), paragraphs (vii) and (viii) are revised and paragraph (x) is added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform with requirements of § 173.203;

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter;

(x) Emergency response information requirements of subpart G of part 172.

* * * * *

Issued in Washington, DC, on October 26, 2004, under authority delegated in 49 CFR part 1.

Elaine E. Joost,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04–24377 Filed 11–3–04; 8:45 am]

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