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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–322–AD; Amendment 39–13221; AD 2003–14–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors that appeared in airworthiness directive (AD) 2003–14–02 that was published as a final rule; correction in the **Federal Register** on August 15, 2003 (68 FR 48783). The typographical errors resulted in an incorrect AD number and effective date. This AD is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. This AD requires a one-time inspection of the aft edge of the left and right main windshields to determine whether a certain placard is installed, and corrective actions if necessary.

DATES: Effective August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2003–14–02, amendment 39–13221, applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, was published as a final rule; correction in the **Federal Register** on August 15, 2003 (68 FR 48783). That AD requires a one-time inspection of the aft edge of the left and right main windshields to determine whether a certain placard is installed, and corrective actions if necessary.

As published, that final rule; correction incorrectly specified the AD number as ''2003–14–02 R1'' instead of ''2003–14–02'' and the effective date as ''August 11, 2003'' instead of ''August 14, 2003.''

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains August 14, 2003.

§ 39.13 [Corrected]

■ On page 48783, in the third column, paragraph 2 of Part 39—Airworthiness Directives is corrected to read as follows:

* * * * *

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

AD 2003–14–02 Bombardier, Inc. (Formerly Canadair): Amendment 39–13221. Docket 2001–NM–322–AD.

* * * * *

■ On page 48784, in the second column, paragraph (e) of AD 2003–14–02 is corrected to read as follows:

* * * * *

(e) The effective date of this amendment remains August 14, 2003.

* * * * *

Issued in Renton, Washington, on September 11, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23669 Filed 9–16–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–05–AD; Amendment 39–13309; AD 2003–19–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. This AD requires replacement of the gas generator high pressure (HP) turbine disk before further flight after the engine has accumulated 5 minutes of operating time at the 2½ minute one engine inoperative (OEI) power rating. This amendment is prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. We are issuing this AD to prevent engine failure of the only operating engine while experiencing an OEI condition.

DATES: This AD becomes effective October 22, 2003.

ADDRESSES: You may get the service information identified in this AD from Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80.

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

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. We published the proposed AD in the **Federal Register** on May 20, 2003 (68 FR 27492). That action proposed to require replacement of the gas generator high pressure (HP) turbine disk before further flight after the engine has accumulated 5 minutes of operating time at the 2½ minute one engine inoperative (OEI) power rating.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no

comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Changes to 14 CFR Part 39—Effect on the 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. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

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 this AD:

(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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–05–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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):

2003–19–06 Turbomeca S.A.: Amendment 39–13309. Docket No. 2003–NE–05–AD.

Effective Date

(a) This AD becomes effective October 22, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter Deutschland GmbH model EC135 T1 and Agusta S.p.A. model A109 helicopters.

Unsafe Condition

(d) This AD is prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. The actions specified in this AD are intended to prevent engine failure of the only operating engine while at one engine inoperative (OEI) condition.

Compliance

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

(f) After the effective date of this AD, replace the gas generator HP turbine disk before further flight after the engine has accumulated 5 minutes operating time at the 2½ minute OEI power rating.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(h) None.

Related Information

(i) The subject of this AD is addressed in DGAC airworthiness directive 2003–098(A), dated March 5, 2003, and Turbomeca S.A. Alert Service Letters No. 2174/02/ARRIUS2B1/19 and No. 2175/02/ARRIUS2K1/3, both dated July 30, 2002.

Issued in Burlington, Massachusetts, on September 11, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–23673 Filed 9–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–35]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9L Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 2003. The incorporation by reference of FAA Order 7400.9L is approved by the Director of the Federal Register as of September 16, 2003, through September 15, 2004.

FOR FURTHER INFORMATION CONTACT: Christine Graves, Airspace and Rules Division (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9K, Airspace Designations and Reporting Points, dated September 2, 2002, and effective September 16, 2002, listed Class A, B, C, D, and E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in 14 CFR 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9K in § 71.1, effective September 16, 2002, through September 15, 2003. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9K in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This

rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9L. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9L in § 71.1, as of September 16, 2003, through September 15, 2004. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9L.

The Rule

This action amends 14 CFR part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9L, effective September 16, 2003, through September 15, 2004. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9L in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points can be found in FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 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. The approval to incorporate by reference FAA Order 7400.9L is effective September 16, 2003, through September 15, 2004. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9L may be obtained from the Airspace and Rules Division, ATA–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9L may be inspected in Docket No. 29334 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 325, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is applicable September 16, 2003, through September 15, 2004.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.31 [Amended]

■ 4. Section 71.31 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.33 [Amended]

■ 5. Paragraph (c) of § 71.33 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.41 [Amended]

■ 6. Section 71.41 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.51 [Amended]

■ 7. Section 71.51 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.61 [Amended]

■ 8. Section 71.61 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.71 [Amended]

■ 9. Paragraphs (b), (c), (d), (e), and (f) of Section 71.71 are amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

§ 71.901 [Amended]

■ 10. Paragraph (a) of Section 71.901 is amended by removing the words ''FAA Order 7400.9K'' and adding, in their place, the words ''FAA Order 7400.9L.''

Issued in Washington, DC, September 10, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–23768 Filed 9–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14402; Airspace Docket No. 01–AWA–4]

RIN 2120–AA66

Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the current Houston, TX, Class B airspace area to contain large turbine-powered aircraft during operations to the new Runway 8L/26R at George Bush Intercontinental Airport (IAH), and to the new primary runway (Runway 4) at William P. Hobby Airport (HOU). The FAA is taking this action to enhance safety and improve the management of aircraft operations in the Houston terminal area. Further, this action supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2003, the FAA proposed to modify the Houston Class B airspace area (68 FR 18910). The FAA proposed this action due to a significant growth in aircraft operations in the last ten years. To accommodate this growth, the City of Houston is scheduled to complete construction of the new Runway 8L/26R for IAH in October 2003. Additionally, the flow of aircraft operations at HOU will be adjusted to use Runway 4 as the primary runway. To provide protection for operations to the new runway at IAH and the planned traffic flow adjustments at HOU, the FAA is taking this action to modify the Houston Class B airspace area.

Subsequent to the proposal, further technical analysis conducted by the FAA revealed that the proposed modification to Area A will not be required to contain large turbo-jet operations to the new Runway 8L/26R within the Houston Class B airspace area. Therefore, this action does not reflect the proposed modification to Area A.

Discussion of Comment

In response to the notice of proposed rulemaking, the FAA received 68 comments.

Sixty-four commenters expressed concerns that aerobatic operations over the Sack-O-Grande Airport would be impacted. The FAA believes that there will be no impact on aerobatic operations in this area because the current waiver that permits aerobatic operations over the Sack-O-Grande Airport will remain in effect. The upper portion of the waivered area (3,000 feet to 3,500 feet) will be within the modified Houston Class B airspace area where an additional margin of safety will be provided through the application of appropriate Class B separation standards.

One commenter expressed a concern that noise from large turbine-powered aircraft at lower altitudes over populated areas to the east and west of IAH would be a problem. The noise issue was addressed during the environmental analysis for Runway 8L/26R at IAH. The noise impact was determined to be minimal because the affected areas east and west of the airport are largely unpopulated farmland and prairie. The same commenter also expressed a concern with increasing the Class B airspace area to a 50-nautical mile (NM) radius of IAH. The FAA, however, notes that the proposal did not expand the lateral dimensions of the Houston Class B airspace area beyond the current 30-NM radius of IAH.

One commenter expressed a concern that the proposed expansion of Areas B and C would compress general aviation traffic down to lower altitudes. The FAA recognizes that in order to remain clear of the Houston Class B airspace area, aircraft will either fly lower or further east or west of IAH. However, this is necessary to separate them from large turbine-powered aircraft arriving and departing IAH.

The Aircraft Owners and Pilots Association concurred with the FAA's efforts to add waypoints to the Class B airspace area chart to assist pilots navigating the busy terminal area. With the aid of the Aircraft Owners and Pilot's Association, the FAA has developed eight waypoints in the Houston terminal area. These waypoints are scheduled to be charted October 30, 2003.

The Air Line Pilots Association recommended that the FAA raise the 3,000-foot floor to 4,000 feet to the east and west of IAH to realistically reflect the air traffic control requirements for conducting triple, simultaneous approaches and to allow the efficient operation of aircraft. The FAA notes that the Houston Class B airspace area is designed to contain large turbine-powered aircraft within the Houston Class B airspace area while they are conducting triple, simultaneous instrument approaches at IAH. When conducting triple, simultaneous instrument approaches each aircraft must be assigned an altitude that differs by at least 1,000 feet from the altitude of the other two aircraft conducting simultaneous approaches. This requires the use of additional lower altitudes to the east and west of IAH. Thus, the FAA is not amending the proposed altitudes.

The Rule

This amendment to part 71 of Title 14, Code of Federal Regulations (14 CFR part 71) modifies the Houston Class B airspace area. Specifically, this action expands the lateral limits of Area B to the east and west of IAH; expands the lateral limits of Area C to the east and west of IAH and to the southwest of HOU; and expands the lateral limits of Area D to the southwest of HOU to improve the containment of turbo-jet aircraft operating within the Houston Class B airspace area.

Area A. Area A is not modified.

Area B. Area B is modified to the east and west of IAH incorporating into Area B, two segments of the Class B airspace area that are currently contained within Area C. Specifically, Area B is extended to the east incorporating that part of Area C airspace that lies on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 15– and 20–NM arcs. Area B is extended to the west incorporating that part of Area C airspace that lies on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 15– and 20–NM arcs.

Area C. Area C is modified to the east and west of IAH incorporating into Area C, two segments of the Class B airspace that are currently contained within Area D. Specifically, Area C is extended to the east incorporating that part of Area D airspace that lies on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 20– and 30–NM arcs and to the west incorporating that part of Area D airspace that lies on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 20– and 30–NM arcs of the airport. Area C is also modified to the southwest of HOU by incorporating into Area C, one segment of the Class B airspace that is currently contained within Area D. Specifically, Area C is extended to the southwest incorporating that part of Area D airspace that lies on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 15– and 20–NM arcs.

Area D. Area D is modified by expanding the boundaries of Area D to the southwest of HOU. Specifically, Area D is extended to the southwest of HOU incorporating airspace that lies on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 20– and 25–NM arcs.

Area E. Area E is not modified.

These modifications improve the management of aircraft operations in the Houston terminal area, and enhance safety by extending and lowering the floor of Class B airspace to protect a high volume of instrument approaches to IAH and HOU airports. Additionally, this action supports various efforts to enhance the efficiency and capacity of the National Airspace System including the National Airspace Redesign project and the FAA's Operational Evolution Plan.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This Final Rule will modify the Houston, TX, Class B airspace. The final rule will reconfigure the sub-area boundaries, raise the altitude ceiling in certain segments of the airspace and lower the altitude floor in certain segments.

The final rule will generate benefits for system users in the form of enhanced operational efficiency and simplified navigation in the Houston terminal area. These modifications will impose some costs (an additional 5 NM circumnavigation around the expanded controlled airspace) on operators of non-compliant aircraft. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule may impose some circumnavigation costs on individuals operating in the Houston terminal area; but the final rule will not impose any costs on small business entities. Operators of GA aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Houston terminal area. Therefore, these small entities should not incur any additional costs as a result of the final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The final rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private

sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

In view of the minimal or zero cost of compliance of the rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the rule will be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000 Subpart B-Class B Airspace.

* * * * *

ASW TX B Houston, TX (Revised)

George Bush Intercontinental Airport (IAH) (Primary Airport)
(Lat. 29°58′50″ N., long. 95°20′23″ W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field (EFD)
(Lat. 29°36′27″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH)
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Point of Origin
(Lat. 29°39′01″ N., long. 95°16′45″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile DME arc of Humble VORTAC; thence clockwise along the Humble VORTAC 10-mile DME arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along the 8-mile arc from the Point of Origin to intercept the 056° bearing from the point of origin; thence southwest along the 056° bearing to the 5.1-mile fix from the point of origin, thence direct to the point of origin 131° bearing/5.8-mile fix from the point of origin; thence southeast along the 131° bearing from the point of origin to intercept the 7-mile arc from the point of origin; thence clockwise on the 7-mile arc to the 156° bearing from the point of origin; thence north along the 156° bearing to the 6-mile fix from the point of origin; thence clockwise along the 6-mile arc to the 211° bearing from the point of origin; thence south along the 211° bearing from the point of origin to the 8-mile arc from the point of origin; thence clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the point of origin; thence northeast along the 211° bearing to the 10-mile arc from the point of origin; thence counterclockwise along the 10-mile arc to the 156° bearing from the point of origin; thence southeast along the 156° bearing to the 15-mile arc from the point of origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and Interstate 10 (I–10); thence east on I–10 to the intersection of I–10 and the Humble VORTAC 20-mile DME arc; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and Humble VORTAC 048° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 242° radial and the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43′40″ N., long. 95°27′40″ W.; thence southwest along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence clockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 048° radial; thence counterclockwise on the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 242° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43′40″ N., long. 95°27′40″ W.; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 211° bearing from the point of origin; thence clockwise along the 15-mile arc to the intersection of the 15-mile arc and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc and the 248° bearing from the point of origin; thence counterclockwise along the 20-mile arc from the point of origin to the intersection of the 20-mile arc and the 211° bearing from the point of origin; thence northeast along the 211° bearing from the point of origin to the intersection of the 10-mile arc and the 211° bearing from the point of origin; thence counterclockwise along the 10-mile arc to the intersection of the 10-mile arc and the 156° bearing from the point of origin; thence southeast along the 156°

bearing to the 15-mile arc and 156° bearing from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and SH 59; thence southwest to and along SH 59 to the intersection of the 15-mile arc from the point of origin and SH 59; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and SH 59; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 211° bearing and the 20-mile arc from the point of origin; thence northeast to the intersection of the 15-mile arc from the point of origin and the 211° bearing from the point of origin; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and I–10; thence east along I–10 to the intersection of the Humble VORTAC 20-mile DME arc and I–10; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence clockwise on the Humble VORTAC 30-mile DME arc until the intersection of the Humble VORTAC 30-mile DME arc and the 20-mile arc from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence southwest to the intersection of the 25-mile arc from the point of origin and the 245° bearing from the point of origin; thence counterclockwise on the 25-mile arc from the point of origin to the intersection of the 25-mile arc from the point of origin and the 211° bearing from the point of origin; thence northeast on the 211° bearing from the point of origin to the point of beginning; and that airspace beginning at the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence counterclockwise along the Humble VORTAC 20-mile DME arc to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the point of origin and SR 6; thence southeast along SR 6 to the intersection of SR 6 and FR 521; thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of the beginning.

* * * * *

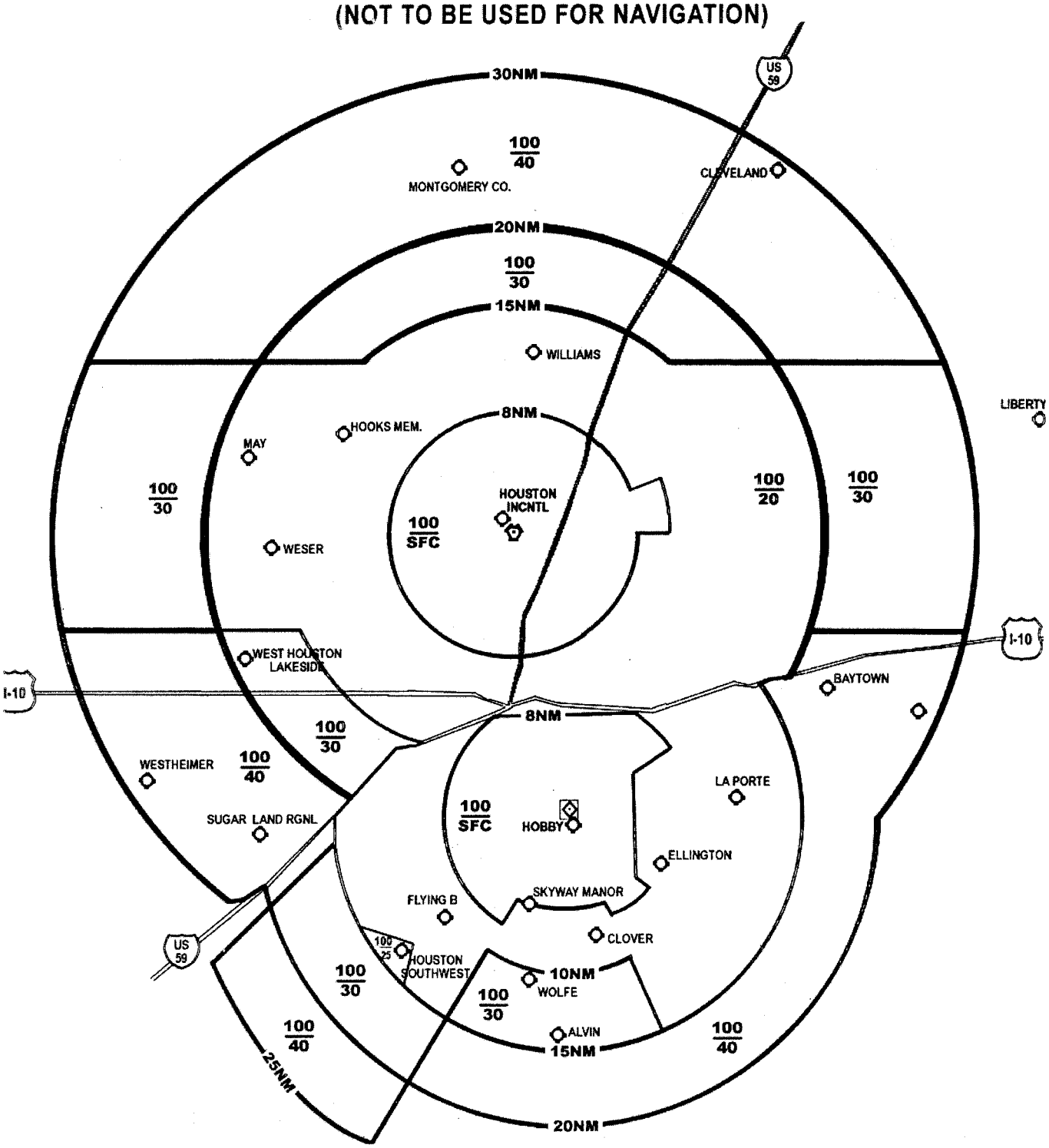
Issued in Washington, DC, on September 9, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–P

HOUSTON, TX
CLASS B AIRSPACE AREA
(NOT TO BE USED FOR NAVIGATION)



ASD 01-AWA-4

[FR Doc. 03–23601 Filed 9–16–03; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4759–F–03]

RIN 2577–AC39

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled By a Public Housing Agency

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule provides that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. The inclusion of PHA-owned or controlled properties among properties eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option. The final rule also establishes procedures to remove potential conflicts of interest where the PHA is the seller. These provisions are modeled on the requirements for PHA-owned units in the voucher rental program. The final rule follows publication of an October 28, 2002, interim rule. After consideration of the issues raised by the single public commenter on the interim rule, HUD has decided to adopt the interim rule without change.

DATES: *Effective Date:* October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

On October 28, 2002 (67 FR 65864), HUD published an interim rule providing that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. Under the ''homeownership option'' of the Housing Choice Voucher Program, a PHA may choose to provide monthly homeownership assistance to an eligible family that purchases a dwelling unit to be occupied by the family. On November 6, 2002 (67 FR 67522), HUD published a technical correction to the October 28, 2002, interim rule, correcting a typographical error concerning the designation of the paragraph being added to the voucher program regulations.

The October 28, 2002, interim rule amended § 982.628 of the homeownership option regulations, which concerns the eligibility of units, to specify that a PHA may provide homeownership assistance for the purchase of a PHA-owned unit. The inclusion of PHA-owned units in the universe of eligible units expands the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option.

The October 28, 2002, interim rule provides that PHA-owned units are eligible for purchase through the homeownership option, but provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. The independent entity must review the contract of sale, conduct the initial housing quality standards (HQS) inspection, and review the independent inspection report. In addition, the independent entity must determine the reasonableness of the sales price and any PHA-provided financing.

The reviews performed by the independent entity shall be conducted in accordance with the homeownership option regulations. The independent entity must be selected by the PHA and approved by HUD in accordance with existing procedures under the tenant-based assistance program at § 982.352(b)(iv)(B) and (C). The PHA may not steer, direct, or require families to purchase PHA-owned properties.

II. This Final Rule; Discussion of the Public Comment on the October 28, 2002, Interim Rule

This final rule follows publication of the October 28, 2002, interim rule. The public comment period on the interim rule closed on December 27, 2002. HUD received a single public comment on the interim rule from the New York City Housing Authority. After consideration of the issues raised by the public commenter, and for the reasons discussed below, HUD has decided to adopt the interim rule without change.

The commenter supported the changes made by the interim rule, writing that the rule ''expands the choices available especially in markets where the affordable stock is decreasing.'' However, the commenter also wrote that high-cost communities, such as New York City, have been unable to implement the voucher homeownership option due to HUD's program design and the nearly prohibitive costs of housing. The commenter suggested that HUD revise the regulations governing the homeownership option to address these concerns. The commenter recommended that HUD authorize the use of project-based voucher assistance to provide voucher homeownership assistance. The commenter also suggested that the maximum term of voucher homeownership assistance (typically fifteen years in most cases under § 982.634) should be made equal to the term of the mortgage obtained by the homebuyer (typically thirty years). Finally, the commenter recommended that HUD allow PHAs to provide voucher homeownership assistance at 120% of the published Fair Market Rent.

As noted, HUD has not revised the interim rule in response to these comments, and is adopting the final rule without change. The changes suggested by the commenter were not included as part of, and are outside the scope of, the October 28, 2002, interim rule which focused on making PHA-owned or controlled properties eligible for purchase under the Housing Choice Voucher Program. The changes recommended by the commenter are more appropriately directed towards the Section 8 homeownership option rule, a separate rulemaking proposed on April 30, 1999 (64 FR 23488), and made final on September 12, 2002 (65 FR 55134). HUD considered the substance of the changes recommended by the commenter in the course of that rulemaking. Since the changes are outside the scope of the interim rule, HUD is not prepared to adopt the suggested changes at this final rule stage. HUD will consider the recommended changes should it decide to undertake future rulemaking to amend the homeownership option regulations.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review'').

OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule is exclusively concerned with homeownership voucher assistance. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (RFA), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The rule does not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 982 of title 24 of the Code of Federal Regulations, published on October 28, 2003, 67 FR 65864, as corrected on November 6, 2003, 67 FR 67522, is promulgated as final, without change.

Dated: September 9, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–23636 Filed 9–16–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 9092]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the income, employment, and gift taxation of split-dollar life insurance arrangements. The final regulations provide needed guidance to persons who enter into split-dollar life insurance arrangements.

DATES: Effective Date: These regulations are effective September 17, 2003.

Applicability Dates: For dates of applicability of the final regulations, *see* §§ 1.61–22(j), 1.83–3(e), 1.83–6(a)(5)(ii), 1.301–1(q)(4), and 1.7872–15(n).

FOR FURTHER INFORMATION CONTACT: Concerning the section 61 regulations, please contact Elizabeth Kaye at (202) 622–4920; concerning the section 83 regulations, please contact Erinn Madden at (202) 622–6030; concerning the section 301 regulations, please contact Krishna Vallabhaneni at (202) 622–7550; concerning the section 7872 regulations, please contact Rebecca Asta at (202) 622–3930; and concerning the application of these regulations to the Federal gift tax, please contact Lane Damazo at (202) 622–3090.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1792. The collections of information are in § 1.7872–15(d)(2) and (j)(3)(ii). Responses to these collections of information are required by the IRS to verify consistent treatment by the borrower and lender of split-dollar loans with nonrecourse or contingent payments. In addition, in the case of a split-dollar loan that provides for nonrecourse payments, the collections of information are voluntary and are required to obtain a benefit (that is, the treatment of a nonrecourse split-dollar loan as a noncontingent split-dollar loan).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 15 minutes to 30 minutes, depending on individual circumstances, with an estimated average of 17 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for

reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

1. Summary of the Prior Notices of Proposed Rulemaking

On July 9, 2002, a notice of proposed rulemaking (REG–164754–01) was published in the **Federal Register** (67 FR 45414) proposing comprehensive rules for the income, gift, employment, and self-employment taxation of equity and non-equity split-dollar life insurance arrangements (the 2002 proposed regulations). In general, a split-dollar life insurance arrangement is an arrangement between two or more parties to allocate the policy benefits and, in some cases, the costs of a life insurance contract. Under an equity split-dollar life insurance arrangement, one party to the arrangement typically receives an interest in the policy cash value (or equity) of the life insurance contract disproportionate to that party's share of policy premiums. That party also typically receives the benefit of current life insurance protection under the arrangement. Under a non-equity split-dollar life insurance arrangement, one party typically provides the other party with current life insurance protection but not any interest in the policy cash value.

The 2002 proposed regulations provide two mutually exclusive regimes for taxation of split-dollar life insurance arrangements—a loan regime and an economic benefit regime. Under the loan regime (which is set forth in § 1.7872–15 of the 2002 proposed regulations), the non-owner of the life insurance contract is treated as loaning the amount of its premium payments to the owner of the contract. The loan regime generally governs the taxation of collateral assignment arrangements. Under the economic benefit regime (which is set forth in § 1.61–22(d) through (g) of the 2002 proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally governs the taxation of endorsement arrangements. The 2002 proposed regulations reserved on the rules for valuing economic benefits provided to the non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime, pending receipt of comments from interested parties.

On May 9, 2003, a notice of proposed rulemaking (REG–164754–01) was published in the **Federal Register** (68 FR 24898) proposing rules for the valuation of economic benefits under an equity split-dollar life insurance arrangement governed by the economic benefit regime (the 2003 proposed regulations). The 2003 proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement, the value of the economic benefits provided to the non-owner under the arrangement for a taxable year equals the cost of any current life insurance protection provided to the non-owner, the amount of policy cash value to which the non-owner has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

A public hearing on the 2002 proposed regulations was held on October 23, 2002, and a public hearing on the 2003 proposed regulations was held on July 29, 2003. In addition, interested parties submitted comments on the 2002 proposed regulations and on the 2003 proposed regulations.

2. Overview of the Final Regulations

These final regulations provide guidance on the taxation of split-dollar life insurance arrangements and apply for purposes of Federal income, employment, self-employment, and gift taxes. After consideration of all comments, the 2002 and 2003 proposed regulations are adopted as amended by this Treasury decision. In general, the amendments are discussed below.

Definition of Split-Dollar Life Insurance Arrangement

The final regulations generally define a split-dollar life insurance arrangement as any arrangement between an owner of a life insurance contract and a non-owner of the contract under which either party to the arrangement pays all or part of the premiums, and one of the parties paying the premiums is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the contract. The definition does not cover the purchase of an insurance contract in which the only parties to the arrangement are the policy owner and the life insurance company acting only in its capacity as issuer of the contract.

The final regulations also retain the special rules from the 2002 proposed regulations that treat certain arrangements entered into either in connection with the performance of services or between a corporation and another person in that person's capacity as a shareholder in the corporation as split-dollar life insurance arrangements regardless of whether the arrangements otherwise satisfy the general definition of a split-dollar life insurance arrangement. Neither the general rule nor the special rules cover so-called ''key man'' life insurance arrangements under which a company purchases a life insurance contract to insure the life of a ''key'' employee or shareholder but retains all the rights and benefits of the contract (including the rights to all death benefits and cash value).

The IRS and Treasury are concerned that certain arrangements may be inappropriately structured to avoid the application of these regulations (for example, by using separate life insurance contracts that are, in substance, one life insurance contract). The Commissioner will use existing authority to challenge any such transaction.

Mutually Exclusive Regimes

The final regulations retain the approach of using two mutually exclusive regimes—an economic benefit regime and a loan regime—for determining the tax treatment of split-dollar life insurance arrangements. As under the 2002 proposed regulations, ownership of the life insurance contract determines which regime applies. Several commentators on both the 2002 and the 2003 proposed regulations argued that the use of the two mutually exclusive regimes is an artificial and rigid approach that fails to account adequately for the economic reality of a split-dollar life insurance arrangement. However, the IRS and Treasury believe that the final regulations, like the 2002 and 2003 proposed regulations, properly account for the division of the costs and benefits of a split-dollar life insurance arrangement.

Several commentators asked that taxpayers be permitted to elect which regime would apply to their split-dollar life insurance arrangements. However,

in the view of the IRS and the Treasury, taxpayers effectively have the ability to elect which regime will apply by designating one party or the other as the owner of the life insurance contract.

One commentator asserted that there is no authority under section 7872 to treat payments made pursuant to split-dollar life insurance arrangements as loans. Therefore, this commentator recommends that taxation of split-dollar life insurance arrangements under section 7872 should occur only if affirmatively elected by the parties to the arrangement. The IRS and Treasury believe there is sufficient authority to require the application of section 7872 to split-dollar life insurance arrangements. There is no legislative history indicating that Congress did not intend section 7872 to apply to payments made pursuant to these arrangements.

A number of commentators expressed concern about the possible application of section 402 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley), Public Law 107–204, to all or certain split-dollar life insurance arrangements entered into by companies subject to Sarbanes-Oxley. These regulations do not address this issue, as interpretation and administration of Sarbanes-Oxley fall within the jurisdiction of the Securities and Exchange Commission.

The final regulations adopt the general rule in the 2002 proposed regulations for determining which regime applies to a split-dollar life insurance arrangement. The 2002 proposed regulations provided a special rule that the economic benefit regime applied to a split-dollar life insurance arrangement if the arrangement is entered into in connection with the performance of services, and the employee or service provider is not the owner of the life insurance contract; or the arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donee is not the owner of the life insurance contract. The final regulations adopt this special rule, but provide that this rule applies when the employer, service recipient or donor is the owner.

The final regulations add a rule regarding the treatment of a transfer of a life insurance contract under a split-dollar life insurance arrangement from an owner to a non-owner when payments under the arrangement had been treated, prior to transfer, as split-dollar loans under § 1.7872–15. Under this rule, the economic benefit regime applies to the split-dollar life insurance arrangement from the date of the transfer and the payments made (both before and after the transfer) are not treated as split-dollar loans on or after the date of the transfer. The transferor of the life insurance contract must fully take into account all economic benefits provided under the split-dollar life insurance arrangement.

Owners and Non-Owners

The final regulations generally retain the rules in the 2002 proposed regulations for determining the owner and the non-owner of the life insurance contract. Thus, the owner generally is the person named as the policy owner. If two or more persons are designated as the policy owners, the first-named person generally is treated as the owner of the entire contract.

Several commentators argued that determining tax ownership based on whom the parties name as the policy owner of the life insurance contract represents a departure from general tax principles. Commentators suggested that a split-dollar life insurance arrangement is like any co-ownership situation in which two or more parties agree to share in the costs and benefits of a policy such that each party will be entitled to exercise certain rights with respect to the underlying policy and will have certain responsibilities.

The IRS and Treasury disagree with that argument. Split-dollar life insurance arrangements are structured in myriad ways, some formally as loans to the employee (for example, collateral-assignment arrangements), some formally as co-ownership arrangements between the employer and the employee, and some as arrangements in which the employer is, in form, the sole owner (for example, endorsement arrangements). In addition, split-dollar life insurance arrangements ordinarily involve division of the benefits and costs of the life insurance contract, but the division of benefits ordinarily does not correspond to the division of costs. Because the division of the burdens and benefits of the life insurance contract vary widely in split-dollar life insurance arrangements, and because title ownership generally is a factor in determining tax ownership, it is reasonable to determine tax ownership based on who is the named owner of the policy. In addition, this rule provides a clear objective standard so that both taxpayers and the IRS can readily determine which regime applies under the final regulations.

If two or more persons are named as policy owners of a life insurance contract and each person has, at all times, all the incidents of ownership with respect to an undivided interest in the contract, those persons are treated as owners of separate contracts for purposes of these regulations (although not for purposes of section 7702 and other rules for the taxation of life insurance contracts). An undivided interest in a life insurance contract consists of an identical fractional or percentage interest or share in each right, benefit, and obligation with respect to the contract. For example, if an employer and an employee own a life insurance contract and share equally in all rights, benefits and obligations under the contract, they are treated as owning two separate contracts; ordinarily neither contract would be treated as part of a split-dollar life insurance arrangement. However, if the employer and the employee agree to enter into a split-dollar life insurance arrangement with respect to what otherwise would have been treated as the employer's (or the employee's) separate contract, the purported undivided interests will be disregarded, and the entire arrangement will be treated as a split-dollar life insurance arrangement. The Commissioner will consider all of the facts and circumstances of an arrangement to determine whether the parties have appropriately characterized the arrangement as one involving undivided interests and, therefore, not subject to these regulations.

The final regulations provide attribution rules for compensatory split-dollar life insurance arrangements. Under these rules, the employer or service recipient will be treated as the owner of the life insurance contract if the contract is owned by a member of the employer's controlled group (determined under the rules of sections 414(b) and 414(c)), a trust described in section 402(b) (sometimes referred to as a ''secular trust''), a grantor trust treated as owned by the employer (including a rabbi trust), or a welfare benefit fund (within the meaning of section 419(e)(1)).

The final regulations retain the special rule for non-equity split-dollar life insurance arrangements. Under this special rule, non-equity arrangements entered into in a compensatory context or a gift context will be subject to the economic benefit regime. The final regulations provide rules for determining the tax treatment of the arrangement if the parties subsequently modify the arrangement so that it is no longer a non-equity arrangement. If, immediately after the modification, the employer, service recipient, or donor is the owner of the life insurance contract (determined without regard to the special rule for non-equity arrangements), the employer, service recipient, or donor continues to be treated as the owner of the life

insurance contract (such that the normal rules of the economic benefit regime for equity split-dollar life insurance arrangements will apply). If, immediately after the modification, the employer, service recipient, or donor is not the owner, the employer, service recipient, or donor is treated as having made a transfer of the contract to the employee, service provider, or donee as of the date of the modification. For purposes of these rules, the replacement of a non-equity arrangement with a successor equity arrangement will be treated as a modification of the non-equity arrangement.

3. Taxation Under the Economic Benefit Regime

a. In General

The final regulations retain the basic rules for taxation under the economic benefit regime that had been set forth in the 2002 and 2003 proposed regulations. Thus, the final regulations provide that, for these arrangements, the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract, and those economic benefits must be accounted for fully and consistently by both the owner and the non-owner. The value of the economic benefits, reduced by any consideration paid by the non-owner to the owner, is treated as provided from the owner to the non-owner.

The tax consequences of the provision of economic benefits will depend on the relationship between the owner and the non-owner. Thus, the provision of the benefit may constitute a payment of compensation, a distribution under section 301, a capital contribution, a gift, or a transfer having a different tax character. The benefit must be taken into account based on its character. For example, in a split-dollar life insurance arrangement in which an employer provides an employee with economic benefits, the employee would take those economic benefits into account by reporting them as compensation on the employee's Federal income tax return for the year in which the benefits are provided and the employer would take the economic benefits into account by reporting them on the appropriate employment tax and information returns. In a split-dollar life insurance arrangement in which a donor provides economic benefits to an irrevocable life insurance trust, the donor would take those economic benefits into account by reporting them on the Federal gift tax return required to be filed by the donor; the trust, however, generally would not be required to take any action to take the benefits into account because those economic benefits would be excludable from gross income under section 102.

Non-Equity Split-Dollar Life Insurance Arrangements

Under the final regulations, the tax treatment of a non-equity split-dollar arrangement generally follows the tax treatment of a non-equity split-dollar arrangement under Rev. Rul. 64–328 (1964–2 C.B. 11) and its progeny. The proposed regulations required that the average death benefit for the taxable year be used to compute current life insurance protection. Commentators objected to the use of an ''average'' death benefit. They explained that the computation of the average death benefit imposed additional administrative burdens on life insurance companies as well as both owners and non-owners. In addition, the commentators stated that the proposed regulations were not clear on how the average death benefit for the taxable year was to be determined. As an alternative, the commentators suggested that the death benefit as of the policy anniversary date would be an appropriate measure of the death benefit for purposes of determining current life insurance protection. In response to these commentators, the final regulations provide that, subject to an anti-abuse rule, current life insurance protection is determined on the last day of the non-owner's taxable year unless the parties agree to use the policy anniversary date. Taxpayers may change the valuation date with the consent of the Commissioner.

Equity Split-Dollar Life Insurance Arrangements

The final regulations generally retain the rules set out in the 2002 and 2003 proposed regulations for the taxation of equity split-dollar life insurance arrangements. Therefore, the value of the economic benefits provided by the owner to the non-owner for a taxable year equals the cost of any current life insurance protection provided to the non-owner, the amount of policy cash value to which the non-owner has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the non-owner (to the extent not actually taken into account for a prior taxable year). The owner and the non-owner also must account fully and consistently for any right in, or benefit of, a life insurance contract provided to the non-owner under an equity split-dollar life insurance arrangement.

The final regulations provide that the non-owner has current access to any portion of the policy cash value to which the non-owner has a current or future right and that currently is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors. As indicated in the preamble of the 2003 proposed regulations, the IRS and Treasury intend that the concept of '''access' '' be construed broadly to include any direct or indirect right under the arrangement allowing the non-owner to obtain, use, or realize potential economic value from the policy cash value. Thus, for example, a non-owner has access to policy cash value if the non-owner can directly or indirectly make a withdrawal from the policy, borrow from the policy, or effect a total or partial surrender of the policy. Similarly, for example, the non-owner has access if the non-owner can anticipate, assign (either at law or in equity), alienate, pledge, or encumber the policy cash value or if the policy cash value is available to the non-owner's creditors by attachment, garnishment, levy, execution, or other legal or equitable process. Policy cash value is inaccessible to the owner if the owner does not have the full rights to policy cash value normally held by an owner of a life insurance contract. Policy cash value is inaccessible to the owner's general creditors if, under the terms of the split-dollar life insurance arrangement or by operation of law or any contractual undertaking, the creditors cannot, for any reason, effectively reach the policy cash value in the event of the owner's insolvency.

Commentators on the 2003 proposed regulations generally objected to the rule requiring the non-owner under an equity arrangement to include in income the portion of the policy cash value to which the non-owner has current access. Several commentators argued that section 72(e) specifically provides for tax-free inside build-up under a life insurance contract, precluding any taxation of policy cash value to the non-owner prior to a ''realization event'' (such as rollout of the policy). That argument ignores the plain language of section 72(e)(1), which states that the rules of section 72(e) apply only if no other provision of subtitle A of the Internal Revenue Code (Code) applies. In the case of an equity arrangement subject to the economic benefit regime, the relationship between the owner and the non-owner and the terms of the arrangement between them ordinarily make other provisions of subtitle A applicable, such as section 61(a)(1).

The tax-deferred inside build-up provided by section 72(e) properly

applies only to the taxpayer that owns the life insurance contract. If the owner of the contract provides any of the rights or benefits under the contract to another taxpayer, that provision of rights and benefits is subject to tax under the rules that otherwise follow from the relationship between the parties. For example, this result applies whenever an employer that owns a life insurance contract compensates an employee by giving the employee rights to the policy cash value. In that case, the employer (as the owner of the contract) enjoys tax-deferred inside build-up under section 72(e), but the employee has gross income under section 61(a)(1) equal to the value of the economic benefit attributable to the employee's rights to the policy cash value. Thus, the regulations are consistent with section 72(e).

Other commentators generally acknowledged that the 2003 proposed regulations properly tax the non-owner whenever the non-owner has ''current access'' to the policy cash value in an equity arrangement but argued that the tax should be imposed under section 83 rather than under section 61. In effect, these commentators argued that the employee's current access to policy cash value should give rise to transfers of property with respect to portions of the life insurance contract. The commentators argued that the primary difference between this suggested approach and the approach set out in the 2003 proposed regulations would be the treatment of inside build-up on amounts already taxed to the non-owner. Specifically, the commentators argued that, under the proposed section 83 approach, inside build-up on amounts already taxed to the non-owner would be tax-free to the non-owner under section 72(e); under the approach of the 2003 proposed regulations, the subsequent inside build-up is tax-deferred to the owner but not to the non-owner.

The IRS and Treasury believe that the approach set out in the 2003 proposed regulations remains appropriate and so have not followed the suggestion to adopt a section 83 approach. Section 83 applies only in connection with a transfer of property, but a non-owner may have currently includible income by reason of another rule—such as the doctrines of constructive receipt, cash equivalence, or economic benefit. It would be inappropriate to limit current taxation to circumstances that constitute transfers of property under section 83, and it would be inappropriate in this context to apply section 83 to circumstances that give rise to income under other Code provisions or judicial doctrines.

Several commentators raised questions about the effect of state law limitations on access to policy cash value by the owner's creditors. These commentators read Example 2 in the 2003 proposed regulations as stating that any such state law restriction would in and of itself cause the non-owner to have current access to the policy cash value. Thus, these commentators argued, the 2003 regulations potentially imposed current tax on the policy cash value of any non-equity arrangement where state law limited the rights of the owner's creditors to reach the policy cash value. However, Example 2 indicated that the owner there had the right to receive the lesser of the policy cash value or total premiums; in other words, Example 2 indicated that the arrangement was an equity arrangement. The final regulations clarify that the non-owner has current access to policy cash value only if, under the arrangement, the non-owner has a current or future right to policy cash value; the non-owner will not have any such right in a true non-equity arrangement. If the non-owner does have such a right, any restriction on the owner's creditors to reach policy cash value, whether established by contract or by local law, results in an economic benefit to the non-owner.

Several commentators objected to the rule in the 2003 proposed regulations that the non-owner has current access to any portion of the policy cash value that cannot be accessed by the owner. These commentators argued that as long as policy cash value can be accessed by the owner's creditors in the event of insolvency, the owner should not be viewed as providing any economic benefit to the non-owner. That objection, however, overlooks the economic reality of an equity split-dollar life insurance arrangement. If the owner commits funds to a life insurance contract and undertakes that it will not withdraw those funds from the insurance contract, the amounts so committed do not remain a general asset of the owner. The owner of the life insurance contract in such an arrangement has parted with the ownership and use of the funds for the benefit of the non-owner. This contrasts with an irrevocable rabbi trust, where the employer effectively remains the tax owner of the assets held by the trustee and the rabbi trust assets may still be (and very often are) invested in the employer's business.

In response to the suggestions of commentators, the final regulations provide that the policy cash value, like the amount of current life insurance protection, is determined as of the last day of the non-owner's taxable year unless the parties agree to use the policy anniversary date. The final regulations retain the anti-abuse rule preventing the parties from manipulating the policy cash value for purposes of determining the value of the economic benefit that the non-owner must take into account and extend that rule to the value of the current life insurance protection.

Taxpayers should note that, in certain cases, a separate tax rule may require a non-owner to include an amount in gross income under an equity split-dollar life insurance arrangement at a time earlier than would be required under these regulations. For example, section 457(f) generally requires an employee of a tax-exempt organization (other than a church organization under section 3121(w)(3)) or of a state or local government to include deferred compensation in gross income when the employee's rights to the deferred compensation are not subject to a substantial risk of forfeiture. An equity split-dollar life insurance arrangement governed by the economic benefit regime constitutes a deferred compensation arrangement. Accordingly, an employee of a tax-exempt organization or of a state or local government may have to include an amount in gross income attributable to an equity split-dollar life insurance arrangement even if the employee does not have current access to the policy cash value under these regulations.

Other Tax Consequences

These final regulations retain the rule of the 2002 proposed regulations that the non-owner has no investment in the contract under section 72(e) prior to a transfer of the contract. The final regulations also retain the rule that any amount paid by the non-owner to the owner for any economic benefit is included in the owner's gross income.

Several commentators objected to the rule providing no investment in the contract to the non-owner for amounts paid to the owner. They argued that section 72(e)(6) provides for such investment in the contract. Commentators also objected to the rule requiring that the owner include in gross income any amount paid by the non-owner. These commentators argued that the owner does not have an accession to wealth as a result of the non-owner's payments because such payments ordinarily are made to fulfill the non-owner's obligation under the split-dollar life insurance arrangement to pay part of the premiums of the life insurance contract.

The regulations generally treat only one person as the owner of the life insurance contract. Because only the owner of a life insurance contract can have an investment in that contract, a non-owner employee cannot have basis in the contract for any of the costs of current life insurance protection. In addition, such costs should not be included in the non-owner's basis or investment in the contract if and when the non-owner becomes the owner of the contract because those payments were made for annual life insurance protection, which protection was exhausted prior to the non-owner's acquisition of the contract. Similarly, the fact that the split-dollar life insurance arrangement may require the non-owner to reimburse the owner for the cost of the death benefit protection provided to the non-owner does not mean that such payment is not income to the owner. In these cases, the owner is ''renting'' out part of the benefit of the life insurance contract to the non-owner for consideration; such consideration constitutes income to the owner.

b. Taxation of Amounts Received Under the Life Insurance Contract

The final regulations retain the rule in the 2002 proposed regulations that any amount received under the life insurance contract (other than an amount received by reason of death) and provided, directly or indirectly, to the non-owner is treated as though paid by the insurance company to the owner and then by the owner to the non-owner. As under the 2002 proposed regulations, this rule applies to certain policy loans (referred to in the regulations as ''specified policy loans''). Although several commentators objected to this treatment of policy loans, the IRS and Treasury believe that the rule is necessary to ensure that parties to a split-dollar life insurance arrangement do not avoid current taxation of the non-owner with respect to amounts provided to the non-owner through the contract.

The final regulations retain the rule that section 101(a) applies to exclude death benefit proceeds paid to a beneficiary (other than the owner of the life insurance policy) from the gross income of the beneficiary only to the extent such amount is allocable to current life insurance protection provided to the non-owner under the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account as an economic benefit provided by the owner to the non-owner. Commentators objected to this rule, arguing that the section 101(a) exclusion extends to the entire amount of death benefit proceeds paid on the death of the insured. They asserted that there is no authority to limit the exclusion to death proceeds allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account.

The IRS and Treasury disagree with that argument. Under the regulations, the owner is treated as providing economic benefits to the non-owner. Although the section 101(a) exclusion extends to the entire amount of death benefit proceeds, the IRS and Treasury believe that only the amount of the death benefit proceeds attributable to the current life insurance protection for which the non-owner paid or which the non-owner took into account under these regulations is excludable from the income of the non-owner's estate or designated beneficiary.

To the extent the non-owner has neither paid for nor taken into account the current life insurance protection, the proceeds paid to the estate or designated beneficiary of the non-owner is a separate transfer of cash that is not shielded from tax by the section 101(a) exclusion. Specifically, those proceeds are deemed payable to the owner, and are excluded from the owner's income by reason of the section 101(a) exclusion, and then paid by the owner to the non-owner's beneficiary (whether or not paid to the beneficiary directly by the insurance company) in a transfer to be taken into account under these regulations.

The character of death benefit proceeds transferred or deemed transferred by the owner to the non-owner is determined by the relationship between the owner and the non-owner. Thus, death benefit proceeds received by the beneficiary of a shareholder who is a non-owner that were paid or payable to a corporation will be treated as a taxable distribution to the shareholder. The same principle applies where death benefit proceeds under a life insurance contract subject to a split-dollar life insurance arrangement are payable to a beneficiary of a service provider who is a non-owner, except that the death benefit proceeds would constitute a compensation payment to the service provider for past services rather than a corporate distribution. This treatment is similar to the situation in Rev. Rul. 61–134 (1961–2 C.B. 250) which also denied exclusion under section 101(a) to death benefits paid under a corporate-owned life insurance policy. In Rev. Rul. 61–134, various shareholders were the beneficiaries of a corporate-owned life insurance policy by reason of their capacity as shareholders. The ruling concluded that the death benefit proceeds received by the shareholders directly from the insurer constituted a taxable distribution of property from the corporation to the shareholders, even though the proceeds would have been excludable from the corporation's income if they had been paid directly to the corporation.

c. Transfer of Life Insurance Contract to the Non-Owner

The final regulations follow the 2002 proposed regulations in determining the tax treatment of a transfer of the life insurance contract from the owner to the non-owner. Consistent with the general rule for determining ownership, the final regulations provide that a transfer of a life insurance contract (or an undivided interest therein) underlying a split-dollar life insurance arrangement occurs on the date that the non-owner becomes the owner of the entire contract (or the undivided interest therein). Unless and until ownership of the contract is formally changed, the owner will continue to be treated as the owner for all Federal income, employment, and gift tax purposes. The fair market value of an undivided interest must be the proportionate share of the fair market value of the entire contract without regard to any discounts or other arrangements between the parties.

After a transfer of an entire life insurance contract, the transferee generally becomes the owner for Federal income, employment, and gift tax purposes, including for purposes of these final regulations. Thus, if the transferor pays premiums after the transfer, the payment of those premiums may be includible in the transferee's gross income if the payments are not split-dollar loans under § 1.7872–15. Alternatively, the arrangement will be subject to the loan regime if the payments constitute split-dollar loans under § 1.7872–15.

4. Taxation Under the Loan Regime

a. In General

The final regulations generally adopt the rules of the 2002 proposed regulations for the loan regime. Under § 1.7872–15, a payment made pursuant to a split-dollar life insurance arrangement is a split-dollar loan and the owner and non-owner are treated, respectively, as borrower and lender if (i) the payment is made either directly

or indirectly by the non-owner to the owner; (ii) the payment is a loan under general principles of Federal tax law or, if not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest); and (iii) the repayment is to be made from, or is secured by, either the policy's death benefit proceeds or its cash surrender value, or both.

Commentators questioned whether the additional standard (''if not a loan under general principles of Federal tax law, a reasonable person would expect the payment to be repaid in full to the non-owner (whether with or without interest)'') is necessary. The IRS and Treasury recognize that, in the earlier years during which a split-dollar life insurance arrangement is in effect, policy surrender and load charges may significantly reduce the policy's cash surrender value, resulting in under-collateralization of a non-owner's right to be repaid its premium payments. Nevertheless, so long as a reasonable person would expect the payment to be repaid in full, the payment is a split-dollar loan under § 1.7872–15, rather than a transfer under § 1.61–22(b)(5) on the date the payment is made. However, the rules in § 1.7872–15(a)(2) do not cause a payment to be treated as a loan for Federal tax purposes if, because of an agreement between the owner and non-owner, the arrangement does not provide for repayment by the owner to the non-owner. For example, if a non-owner makes a payment purported to be a split-dollar loan to an owner, and the non-owner and owner enter into a separate agreement providing that the non-owner will make a transfer to the owner in an amount sufficient to repay the purported split-dollar loan, § 1.7872–15(a)(2) will not cause the payment to be treated as a loan. See § 1.61–22(b)(5) for the treatment of payments by a non-owner that are not split-dollar loans. The final regulations include a new rule under § 1.7872–15(a)(4) that disregards certain stated interest if such interest is to be paid directly or indirectly by the lender (or person related to the lender).

Under § 1.7872–15, each payment under a split-dollar life insurance arrangement is treated as a separate loan for Federal tax purposes. Commentators have suggested that treating each payment as a separate loan will be difficult to administer and overly burdensome for certain taxpayers and have suggested allowing an election to treat all payments made during a single year (or single calendar quarter) as one loan (made on a specified date during the year). However, the final regulations adopt the approach in the 2002 proposed regulations that each premium payment is treated as a separate loan. Treating separate extensions of credit as separate loans is consistent with the 1985 proposed regulations under section 7872 and the legislative history of section 7872, and most accurately accounts for the benefits provided by the lender to the borrower when the loans are below-market.

If a payment on a split-dollar loan is nonrecourse to the borrower and the loan does not otherwise provide for contingent payments, § 1.7872–15 treats the loan as a split-dollar loan that provides for contingent payments unless the parties to the split-dollar life insurance arrangement provide a written representation with respect to the loan. In response to a commentator, the final regulations delete the requirement in the proposed regulations that a nonrecourse split-dollar loan provide for interest payable at a stated rate.

If a split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar loan subject to section 7872 and § 1.7872–15. If the split-dollar loan provides for sufficient interest, then, except as provided in § 1.7872–15, the loan is subject to the general rules for debt instruments (including the rules for OID). In general, interest on a split-dollar loan is not deductible by the borrower under sections 264 and 163(h). Section 1.7872–15 provides special rules for split-dollar loans that provide for certain variable rates of interest, contingent interest payments, and lender or borrower options. Section 1.7872–15 also provides rules for below-market split-dollar loans with indirect participants.

If a split-dollar loan is a below-market loan, then, in general, the loan is recharacterized as a loan with interest at the applicable Federal rate (AFR), coupled with an imputed transfer by the lender to the borrower. The timing, amount, and characterization of the imputed transfers between the lender and borrower of the loan will depend upon the relationship between the lender and the borrower (for example, the imputed transfer is generally characterized as a compensation payment if the lender is the borrower's employer), and whether the loan is a demand loan or a term loan.

b. Special Rules for Certain Term Loans

Special rules are provided for split-dollar term loans payable upon the death of an individual, certain split-dollar term loans that are conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans. Under § 1.7872–15, these split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. However, if the loan does not provide for sufficient interest when the loan is made, forgone interest is determined on the loan annually similar to a split-dollar demand loan. Commentators requested clarification on whether the rate used for purposes of imputation under § 1.7872–15(e)(5) for these split-dollar loans is the AFR for the month in which the loan is made (redetermined annually) or the AFR as of the month in which the loan is made (determined on the date the loan is made). The rate used to determine the amount of forgone interest each year is the AFR based on the term of the loan, determined on the date the split-dollar loan is made, and the rate is not redetermined annually.

c. Split-Dollar Loans With Stated Interest That Is Subsequently Waived, Cancelled or Forgiven

If a split-dollar loan provides for stated interest that is subsequently waived, cancelled or forgiven, appropriate adjustments are required to be made by the parties to reflect the difference between the interest payable at the stated rate and the interest actually paid by the borrower at that time. Further, the final regulations provide that, if stated interest is subsequently waived, cancelled or forgiven, an amount is treated as retransferred from the lender to the borrower. The final regulations add a new rule under which this amount generally is increased by a deferral charge. The final regulations provide a new rule that a payment by the lender to the borrower that, in substance, is a waiver, cancellation or forgiveness is treated as a waiver, cancellation, or forgiveness under the final regulations. The final regulations also provide a new rule that, if a split-dollar loan is nonrecourse and the parties to the split-dollar life insurance arrangement had made the representation under § 1.7872–15(d)(2), although adjustments are required to be made by the parties if the interest paid on the split-dollar loan is less than the interest payments required under the split-dollar loan if all payments were made, a deferral charge is not imposed.

d. Payment Ordering Rules

Payments made by a borrower to a lender pursuant to a split-dollar life insurance arrangement are applied in the following order: To accrued but

unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued; to principal on the outstanding split-dollar loans in the order in which the loans were made; to payments of amounts previously paid by the lender pursuant to the split-dollar life insurance arrangement that were not reasonably expected to be repaid; and to any other payment with respect to a split-dollar life insurance arrangement. One commentator suggested limiting the payments to which the payment ordering rule applies to those that are made to or for the benefit of the lender. The final regulations adopt this suggestion in the payment ordering rule in § 1.7872–15(k).

e. Employment Taxes and Self-Employment Tax

An imputed transfer under § 1.7872–15 that is treated as an imputed transfer of compensation will have consequences for the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) if the adjustment represents wages to the borrower. In response to questions regarding the consequences of an imputed transfer for employment and self-employment tax purposes, the regulations under sections 1402(a), 3121(a), 3231(e), and 3306(b) were clarified to reference § 1.7872–15 as well as § 1.61–22.

5. Gift Tax Treatment of Split-Dollar Life Insurance Arrangements

The final regulations apply for gift tax purposes, including private split-dollar life insurance arrangements. Thus, if an irrevocable life insurance trust is the owner of the life insurance contract underlying the split-dollar life insurance arrangement, and a reasonable person would expect that the donor, or the donor's estate, will recover an amount equal to the donor's premium payments, those premium payments are treated as loans made by the donor to the trust and are subject to § 1.7872–15. In such a case, payment of a premium by the donor is treated as a split-dollar loan to the trust in the amount of the premium payment. If the loan is repayable upon the death of the donor, the term of the loan is the donor's life expectancy determined under the appropriate table under § 1.72–9 as of the date of the payment and the value of the gift is the amount of the premium payment less the present value (determined under section 7872 and § 1.7872–15) of the donor's right to receive repayment. If, however, the donor makes premium payments that are not split-dollar loans, then the premium payments are governed by general gift tax principles. In such a case, with each premium payment, the donor is treated as making a gift to the trust equal to the amount of that payment.

Different rules apply, however, if the donor is treated under § 1.61–22(c) as the owner of the life insurance contract underlying the split-dollar life insurance arrangement. Under these circumstances, the donor is treated as making a gift to the trust. The value of the gift is the value of the economic benefits provided to the trust, less the amount of any premium paid by the trustee. For example, assume that under the terms of the split-dollar life insurance arrangement, on termination of the arrangement or the donor's death, the donor or donor's estate is entitled to receive an amount equal to the greater of the aggregate premiums paid by the donor or the cash surrender value of the contract. In this case, the donor makes a gift to the trust equal to the cost of the current life insurance protection provided to the trust less any premium amount paid by the trustee. (Thus, a payment by the donor will not constitute a gift if the trust pays the portion of the premium equal to the cost of the current life insurance protection and the donor pays the balance of the premium.) On the other hand, if the donor or the donor's estate is entitled to receive an amount equal to the lesser of the aggregate premiums paid by the donor, or the cash surrender value of the contract, the amount of the economic benefits provided to the trust by the donor equals the cost of any current life insurance protection provided to the trust, the amount of policy cash value to which the trust has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the trust (to the extent not actually taken into account for a prior taxable year). The value of the donor's gift of economic benefits equals the value of those economic benefits provided to the trust for the year minus the amount of premiums paid by the trustee.

As discussed earlier, the final regulations treat the donor as the owner of a life insurance contract where the donee is named as the policy owner if, under the split-dollar life insurance arrangement, the only economic benefit provided to the donee by the donor under the arrangement is the value of current life insurance protection. Any amount paid by a donee, directly or indirectly, to the donor for such current life insurance protection would generally be included in the donor's gross income.

Where the donor is the owner of the life insurance contract that is part of the split-dollar life insurance arrangement, amounts received by the irrevocable insurance trust (either directly or indirectly) under the contract (for example, as a policy owner dividend or proceeds of a specified policy loan) are treated as gifts by the donor to the irrevocable insurance trust as provided in § 1.61–22(e). The donor must also treat as a gift to the trust the amount set forth in § 1.61–22(g) upon the transfer of the life insurance contract (or undivided interest therein) from the donor to the trust.

The gift tax consequences of the transfer of an interest in a life insurance contract to a third party will continue to be determined under established gift tax principles notwithstanding who is treated as the owner of the life insurance contract under the final regulations. *See,* for example, Rev. Rul. 81–198 (1981–2 C.B. 188). Similarly, for estate tax purposes, regardless of who is treated as the owner of a life insurance contract under the final regulations, the inclusion of the policy proceeds in a decedent's gross estate will continue to be determined under section 2042. Thus, the policy proceeds will be included in the decedent's gross estate under section 2042(1) if receivable by the decedent's executor, or under section 2042(2) if the policy proceeds are receivable by a beneficiary other than the decedent's estate and the decedent possessed any incidents of ownership with respect to the policy. One commentator requested that these regulations address the extent to which a decedent's interest in a co-owned policy is included in that decedent's gross estate under section 2042, but the IRS and Treasury believe that issue is beyond the scope of these regulations and may be addressed in future guidance.

6. Effective Date and Obsolescence of Prior Guidance

These final regulations apply to any split-dollar life insurance arrangement entered into after September 17, 2003. Additionally, these final regulations apply to any split-dollar life insurance arrangement entered into on or before September 17, 2003 if the arrangement is materially modified after September 17, 2003. However, a split-dollar life insurance arrangement that is otherwise described in Section IV, Paragraph 4 of Notice 2002–8 (2002–1 C.B. 398) will not be treated as materially modified for these purposes if the change in the split-dollar life insurance arrangement is

made solely to comply with Section IV, Paragraph 4 of Notice 2002–8.

These final regulations provide a non-exclusive list of changes that will not result in a material modification for purposes of the effective date. For example, the final regulations provide that a change solely in the mode of premium payment or a change solely in the interest rate payable on a policy loan under the life insurance contract will not be treated as a material modification.

The 2002 and 2003 proposed regulations provided rules under which taxpayers were permitted to rely on the 2002 and 2003 proposed regulations for arrangements entered into on or before September 17, 2003. This reliance also was intended to be available in circumstances under which taxpayers relied on the proposed regulations to determine that the arrangement would not be subject to the proposed regulations (for example, if the arrangement does not fall with the definition of a split-dollar life insurance arrangement).

Concurrent with the publication of these final regulations in the **Federal Register**, the IRS and Treasury are issuing Rev. Rul. 2003–105 (2003–40 I.R.B.) to obsolete certain revenue rulings with respect to split-dollar life insurance arrangements entered into or materially modified after September 17, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It is hereby certified that the collection of information requirements in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely require a taxpayer to prepare a written representation that contains minimal information (if the loan provides for nonrecourse payments) or a projected payment schedule (if the loan provides for contingent payments). In addition, the preparation of these documents should take no more than .28 hours per taxpayer. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

Drafting Information

The principal authors of these final regulations are Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions and Products), Lane Damazo of the Office of Associate Chief Counsel (Passthroughs and Special Industries), Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting), Erinn Madden of the Office of Associate Chief Counsel (Tax-Exempt and Governmental Entities), and Krishna Vallabhaneni of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.7872–15 also issued under 26 U.S.C. 1275 and 7872. * * *

■ **Par. 2.** Section 1.61–2 is amended by:

■ 1. Redesignating paragraphs (d)(2)(ii)(*a*) and (*b*) as paragraphs (d)(2)(ii)(A) and (B), respectively.

■ 2. Adding two sentences immediately following the second sentence in newly designated paragraph (d)(2)(ii)(A).

The additions read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(d) * * *

(2) * * *

(ii)(A) *Cost of life insurance on the life of the employee.* * * * For example, if an employee or independent contractor is the owner (as defined in § 1.61–22(c)(1)) of a life insurance contract and the payments with regard to such contract are not split-dollar loans under § 1.7872–15(b)(1), the employee or independent contractor must include in income the amount of any such payments by the employer or service recipient with respect to such contract during any year to the extent that the employee's or independent contractor's rights to the life insurance contract are substantially vested (within the meaning of § 1.83–3(b)). This result is the same regardless of whether the employee or independent contractor has at all times been the owner of the life insurance contract or the contract previously has been owned by the employer or service recipient as part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) and was transferred by the employer or service recipient to the employee or independent contractor under § 1.61–22(g). * * *

* * * * *

■ **Par. 3.** Section 1.61–22 is added to read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement for purposes of the income tax, the gift tax, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Self-Employment Contributions Act of 1954 (SECA). For the Collection of Income Tax at Source on Wages, this section also provides rules for the taxation of a split-dollar life insurance arrangement, other than a payment under a split-dollar life insurance arrangement that is a split-dollar loan under § 1.7872–15(b)(1). A split-dollar life insurance arrangement (as defined in paragraph (b) of this section) is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. For rules to determine which rules apply to a split-dollar life insurance arrangement, see paragraph (b)(3) of this section.

(2) *Overview.* Paragraph (b) of this section defines a split-dollar life insurance arrangement and provides rules to determine whether an arrangement is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. Paragraph (c) of this section defines certain other terms. Paragraph (d) of this section sets forth rules for the taxation of economic benefits provided under a split-dollar life insurance

arrangement. Paragraph (e) of this section sets forth rules for the taxation of amounts received under a life insurance contract that is part of a split-dollar life insurance arrangement. Paragraph (f) of this section provides rules for additional tax consequences of a split-dollar life insurance arrangement, including the treatment of death benefit proceeds. Paragraph (g) of this section provides rules for the transfer of a life insurance contract (or an undivided interest in the contract) that is part of a split-dollar life insurance arrangement. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (j) of this section provides the effective date of this section.

(b) *Split-dollar life insurance arrangement*—(1) *In general.* A split-dollar life insurance arrangement is any arrangement between an owner and a non-owner of a life insurance contract that satisfies the following criteria—

(i) Either party to the arrangement pays, directly or indirectly, all or any portion of the premiums on the life insurance contract, including a payment by means of a loan to the other party that is secured by the life insurance contract;

(ii) At least one of the parties to the arrangement paying premiums under paragraph (b)(1)(i) of this section is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract; and

(iii) The arrangement is not part of a group-term life insurance plan described in section 79 unless the group-term life insurance plan provides permanent benefits to employees (as defined in § 1.79–0).

(2) *Special rule*—(i) *In general.* Any arrangement between an owner and a non-owner of a life insurance contract is treated as a split-dollar life insurance arrangement (regardless of whether the criteria of paragraph (b)(1) of this section are satisfied) if the arrangement is described in paragraph (b)(2)(ii) or (iii) of this section.

(ii) *Compensatory arrangements.* An arrangement is described in this paragraph (b)(2)(ii) if the following criteria are satisfied—

(A) The arrangement is entered into in connection with the performance of services and is not part of a group-term life insurance plan described in section 79;

(B) The employer or service recipient pays, directly or indirectly, all or any portion of the premiums; and

(C) Either—

(*1*) The beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to designate as the beneficiary; or

(*2*) The employee or service provider has any interest in the policy cash value of the life insurance contract.

(iii) *Shareholder arrangements.* An arrangement is described in this paragraph (b)(2)(iii) if the following criteria are satisfied—

(A) The arrangement is entered into between a corporation and another person in that person's capacity as a shareholder in the corporation;

(B) The corporation pays, directly or indirectly, all or any portion of the premiums; and

(C) Either—

(*1*) The beneficiary of all or any portion of the death benefit is designated by the shareholder or is any person whom the shareholder would reasonably be expected to designate as the beneficiary; or

(*2*) The shareholder has any interest in the policy cash value of the life insurance contract.

(3) *Determination of whether this section or § 1.7872–15 applies to a split-dollar life insurance arrangement*—(i) *Split-dollar life insurance arrangements involving split-dollar loans under § 1.7872–15.* Except as provided in paragraph (b)(3)(ii) of this section, paragraphs (d) through (g) of this section do not apply to any split-dollar loan as defined in § 1.7872–15(b)(1). Section 1.7872–15 applies to any such loan. *See* paragraph (b)(5) of this section for the treatment of a payment made by a non-owner under a split-dollar life insurance arrangement if the payment is not a split-dollar loan.

(ii) *Exceptions.* Paragraphs (d) through (g) of this section apply (and § 1.7872–15 does not apply) to any split-dollar life insurance arrangement if—

(A) The arrangement is entered into in connection with the performance of services, and the employer or service recipient is the owner of the life insurance contract (or is treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*1*) of this section); or

(B) The arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donor is the owner of the life insurance contract (or is treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*2*) of this section).

(4) *Consistency requirement.* A split-dollar life insurance arrangement described in paragraph (b)(1) or (2) of this section must be treated in the same manner by the owner and the non-owner of the life insurance contract under either the rules of this section or § 1.7872–15. In addition, the owner and non-owner must fully account for all amounts under the arrangement under paragraph (b)(5) of this section, paragraphs (d) through (g) of this section, or § 1.7872–15.

(5) *Non-owner payments that are not split-dollar loans.* If a non-owner of a life insurance contract makes premium payments (directly or indirectly) under a split-dollar life insurance arrangement, and the payments are neither split-dollar loans nor consideration for economic benefits described in paragraph (d) of this section, then neither the rules of paragraphs (d) through (g) of this section nor the rules in § 1.7872–15 apply to such payments. Instead, general income tax, employment tax, self-employment tax, and gift tax principles apply to the premium payments. *See*, for example, § 1.61–2(d)(2)(ii)(A).

(6) *Waiver, cancellation, or forgiveness.* If a repayment obligation described in § 1.7872–15(a)(2) is waived, cancelled, or forgiven at any time, then the parties must take the amount waived, cancelled, or forgiven into account in accordance with the relationships between the parties (for example, as compensation in the case of an employee-employer relationship).

(7) *Change in the owner.* If payments made by a non-owner to an owner were treated as split-dollar loans under § 1.7872–15 and the split-dollar life insurance arrangement is modified such that, after the modification, the non-owner is the owner (within the meaning of paragraph (c)(1) of this section) of the life insurance contract under the arrangement, paragraphs (d) through (g) of this section apply to the split-dollar life insurance arrangement from the date of the modification. The payments made (both before and after the modification) are not treated as split-dollar loans under § 1.7872–15 on or after the date of the modification. The non-owner of the life insurance contract under the modified split-dollar life insurance arrangement must fully take into account all economic benefits provided under the arrangement under paragraph (d) of this section on or after the date of the modification. For the treatment of a transfer of the contract when the unmodified arrangement is governed by paragraphs (d) through (g) of this section, *see* paragraph (g) of this section.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Owner*—(i) *In general.* With respect to a life insurance contract, the person named as the policy owner of such contract generally is the owner of such contract. If two or more persons are named as policy owners of a life insurance contract and each person has, at all times, all the incidents of ownership with respect to an undivided interest in the contract, each person is treated as the owner of a separate contract to the extent of such person's undivided interest. If two or more persons are named as policy owners of a life insurance contract but each person does not have, at all times, all the incidents of ownership with respect to an undivided interest in the contract, the person who is the first-named policy owner is treated as the owner of the entire contract.

(ii) *Special rule for certain arrangements*—(A) *In general.* Notwithstanding paragraph (c)(1)(i) of this section—

(*1*) An employer or service recipient is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in paragraph (d)(3) of this section; and

(*2*) A donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in paragraph (d)(3) of this section.

(B) *Modifications.* If an arrangement described in paragraph (c)(1)(ii)(A) of this section is modified such that the arrangement is no longer described in paragraph (c)(1)(ii)(A) of this section, the following rules apply:

(*1*) If, immediately after such modification, the employer, service recipient, or donor is the owner of the life insurance contract under the split-dollar life insurance arrangement (determined without regard to paragraph (c)(1)(ii)(A) of this section), the employer, service recipient, or donor continues to be treated as the owner of the life insurance contract.

(*2*) If, immediately after such modification, the employer, service recipient, or donor is not the owner of the life insurance contract under the split-dollar life insurance arrangement (determined without regard to paragraph (c)(1)(ii)(A) of this section), the employer, service recipient, or donor is treated as having made a transfer of the entire life insurance contract to the employee, service provider, or donee under the rules of paragraph (g) of this section as of the date of such modification.

(*3*) For purposes of this paragraph (c)(1)(ii)(B), entering into a successor split-dollar life insurance arrangement that has the effect of providing any economic benefit in addition to that described in paragraph (d)(3) of this section is treated as a modification of the prior split-dollar life insurance arrangement.

(iii) *Attribution rules for compensatory arrangements.* For purposes of this section, if a split-dollar life insurance arrangement is entered into in connection with the performance of services, the employer or service recipient is treated as the owner of the life insurance contract if the owner (within the meaning of paragraph (c)(1)(i) of this section) of the life insurance contract under the split-dollar life insurance arrangement is—

(A) A trust described in section 402(b);

(B) A trust that is treated as owned (within the meaning of sections 671 through 677) by the employer or the service recipient;

(C) A welfare benefit fund within the meaning of section 419(e)(1); or

(D) A member of the employer or service recipient's controlled group (within the meaning of section 414(b)) or a trade or business that is under common control with the employer or service recipient (within the meaning of section 414(c)).

(iv) *Life insurance contracts owned by partnerships.* [Reserved]

(2) *Non-owner*—(i) *Definition.* With respect to a life insurance contract, a non-owner is any person (other than the owner of such contract under paragraph (c)(1) of this section) that has any direct or indirect interest in such contract (but not including a life insurance company acting only in its capacity as the issuer of a life insurance contract).

(ii) *Example.* The following example illustrates the provisions of this paragraph (c)(2):

Example. (i) On January 1, 2009, Employer R and Trust T, an irrevocable life insurance trust that is not treated under sections 671 through 677 as owned by a grantor or other person, enter into a split-dollar life insurance arrangement in connection with the performance of services under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or the death of E, an employee of R. C, the beneficiary of T, is E's child. R is the owner of the contract under paragraph (c)(1)(i) of this section. E is the insured under the life insurance contract. Upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the policy cash value of the contract and T will be entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but T has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) Because E and T each have an indirect interest in the life insurance contract that is part of the split-dollar life insurance arrangement, each is a non-owner under paragraph (c)(2)(i) of this section. E and T each are provided economic benefits described in paragraph (d)(2) of this section pursuant to the split-dollar life insurance arrangement. Economic benefits are provided by owner R to E as a payment of compensation, and separately provided by E to T as a gift.

(3) *Transfer of entire contract or undivided interest therein.* A transfer of the ownership of a life insurance contract (or an undivided interest in such contract) that is part of a split-dollar life insurance arrangement occurs on the date that a non-owner becomes the owner (within the meaning of paragraph (c)(1) of this section) of the entire contract or of an undivided interest in the contract.

(4) *Undivided interest.* An undivided interest in a life insurance contract consists of an identical fractional or percentage interest or share in each right, benefit, and obligation with respect to the contract. In the case of any arrangement purporting to create undivided interests where, in substance, the rights, benefits or obligations are shared to any extent among the holders of such interests, the arrangement will be treated as a split-dollar life insurance arrangement.

(5) *Employment tax.* The term employment tax means any tax imposed by, or collected under, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Collection of Income Tax at Source on Wages.

(6) *Self-employment tax.* The term self-employment tax means the tax imposed by the Self-Employment Contributions Act of 1954 (SECA).

(d) *Economic benefits provided under a split-dollar life insurance arrangement*—(1) *In general.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, economic benefits are treated as being provided to the non-owner of the life insurance contract. The non-owner

(and the owner for gift and employment tax purposes) must take into account the full value of all economic benefits described in paragraph (d)(2) of this section, reduced by the consideration paid directly or indirectly by the non-owner to the owner for those economic benefits. Depending on the relationship between the owner and the non-owner, the economic benefits may constitute a payment of compensation, a distribution under section 301, a contribution to capital, a gift, or a transfer having a different tax character. Further, depending on the relationship between or among a non-owner and one or more other persons (including a non-owner or non-owners), the economic benefits may be treated as provided from the owner to the non-owner and as separately provided from the non-owner to such other person or persons (for example, as a payment of compensation from an employer to an employee and as a gift from the employee to the employee's child).

(2) *Value of economic benefits.* The value of the economic benefits provided to a non-owner for a taxable year under the arrangement equals—

(i) The cost of current life insurance protection provided to the non-owner as determined under paragraph (d)(3) of this section;

(ii) The amount of policy cash value to which the non-owner has current access within the meaning of paragraph (d)(4)(ii) of this section (to the extent that such amount was not actually taken into account for a prior taxable year); and

(iii) The value of any economic benefits not described in paragraph (d)(2)(i) or (ii) of this section provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

(3) *Current life insurance protection*—(i) *Amount of current life insurance protection.* In the case of a split-dollar life insurance arrangement described in paragraph (d)(1) of this section, the amount of the current life insurance protection provided to the non-owner for a taxable year (or any portion thereof in the case of the first year or the last year of the arrangement) equals the excess of the death benefit of the life insurance contract (including paid-up additions thereto) over the total amount payable to the owner (including any outstanding policy loans that offset amounts otherwise payable to the owner) under the split-dollar life insurance arrangement, less the portion of the policy cash value actually taken into account under paragraph (d)(1) of this section or paid for by the non-owner under paragraph (d)(1) for the current taxable year or any prior taxable year.

(ii) *Cost of current life insurance protection.* The cost of current life insurance protection provided to the non-owner for any year (or any portion thereof in the case of the first year or the last year of the arrangement) equals the amount of the current life insurance protection provided to the non-owner (determined under paragraph (d)(3)(i) of this section) multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii) of this chapter).

(4) *Policy cash value*—(i) *In general.* For purposes of this paragraph (d), policy cash value is determined disregarding surrender charges or other similar charges or reductions. Policy cash value includes policy cash value attributable to paid-up additions.

(ii) *Current access.* For purposes of this paragraph (d), a non-owner has current access to that portion of the policy cash value—

(A) To which, under the arrangement, the non-owner has a current or future right and;

(B) That currently is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(5) *Valuation date*—(i) *General rules.* For purposes of this paragraph (d), the amount of the current life insurance protection and the policy cash value shall be determined on the same valuation date. The valuation date is the last day of the non-owner's taxable year, unless the owner and non-owner agree to instead use the policy anniversary date as the valuation date. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the value of such economic benefits is determined on the day that the arrangement terminates.

(ii) *Consistency requirement.* The owner and non-owner of the split-dollar arrangement must use the same valuation date. In addition, the same valuation date must be used for all years prior to termination of the split-dollar life insurance arrangement unless the parties receive consent of the Commissioner to change the valuation date.

(iii) *Artifice or device.* Notwithstanding paragraph (d)(5)(i) of this section, if any artifice or device is used to understate the amount of any economic benefit on the valuation date in paragraph (d)(5)(i) of this section, then, for purposes of this paragraph (d), the date on which the amount of the economic benefit is determined is the date on which the amount of the economic benefit is greatest during that taxable year.

(iv) *Special rule for certain taxes.* For purposes of employment tax (as defined in paragraph (c)(5) of this section), self-employment tax (as defined in paragraph (c)(6) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), the portions of the current life insurance protection and the policy cash value that are treated as provided by the owner to the non-owner shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portions of the current life insurance protection and the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(6) *Examples.* The following examples illustrate the rules of this paragraph (d). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1)(i) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2)(i) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(2)(iii) of this section; E does not make any premium payments; E's taxable year is the calendar year; the value of the economic benefits is determined on the last day of E's taxable year; and E reports on E's Federal income tax return for each year that the split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

Example 1. (i) *Facts.* On January 1 of year 1, R and E enter into the split-dollar life insurance arrangement. Under the arrangement, R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the

aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to $1,500,000. R makes premium payments on the life insurance contract of $60,000 in each of years 1, 2, and 3. The policy cash value equals $55,000 as of December 31 of year 1, $140,000 as of December 31 of year 2, and $240,000 as of December 31 of year 3.

(ii) *Analysis.* Under the terms of the split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(2)(i) and (ii) of this section provided to E under the arrangement.

(iii) *Results for year 1.* For year 1, E is provided, under paragraph (d)(2)(ii) of this section, $0 of policy cash value (excess of $55,000 policy cash value determined as of December 31 of year 1 over $55,000 payable to R). For year 1, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,445,000 ($1,500,000 minus $55,000 payable to R). Thus, E includes in gross income for year 1 the cost of $1,445,000 of current life insurance protection.

(iv) *Results for year 2.* For year 2, E is provided, under paragraph (d)(2)(ii) of this section, $20,000 of policy cash value ($140,000 policy cash value determined as of December 31 of year 2 minus $120,000 payable to R). For year 2, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,360,000 ($1,500,000 minus the sum of $120,000 payable to R and the aggregate of $20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 federal income tax returns). Thus, E includes in gross income for year 2 the sum of $20,000 of policy cash value and the cost of $1,360,000 of current life insurance protection.

(v) *Results for year 3.* For year 3, E is provided, under paragraph (d)(2)(ii) of this section, $40,000 of policy cash value ($240,000 policy cash value determined as of December 31 of year 3 minus the sum of $180,000 payable to R and $20,000 of aggregate policy cash value that E actually included in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,260,000 ($1,500,000 minus the sum of $180,000 payable to R and $60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of $40,000 of policy cash value and the cost of $1,260,000 of current life insurance protection.

Example 2. (i) *Facts.* The facts are the same as in *Example 1* except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R is inaccessible to R's general creditors.

(ii) *Analysis.* Under the terms of the split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors and E has a current or future right to that portion of the cash value. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(2)(i) and (ii) of this section provided to E under the arrangement.

(iii) *Results for years 1, 2 and 3.* The results for this example are the same as the results in Example 1.

(e) *Amounts received under the contract*—(1) *In general.* Except as otherwise provided in paragraph (f)(3) of this section, any amount received under a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section (including, but not limited to, a policy owner dividend, proceeds of a specified policy loan described in paragraph (e)(2) of this section, or the proceeds of a withdrawal from or partial surrender of the life insurance contract) is treated, to the extent provided directly or indirectly to a non-owner of the life insurance contract, as though such amount had been paid to the owner of the life insurance contract and then paid by the owner to the non-owner. The amount received is taxable to the owner in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount described in paragraph (e)(3) of this section into account as a payment of compensation, a distribution under section 301, a contribution to capital, a gift, or other transfer depending on the relationship between the owner and the non-owner.

(2) *Specified policy loan.* A policy loan is a specified policy loan to the extent—

(i) The proceeds of the loan are distributed directly from the insurance company to the non-owner;

(ii) A reasonable person would not expect that the loan will be repaid by the non-owner; or

(iii) The non-owner's obligation to repay the loan to the owner is satisfied or is capable of being satisfied upon repayment by either party to the insurance company.

(3) *Amount required to be taken into account.* With respect to a non-owner (and the owner for gift tax and employment tax purposes), the amount described in this paragraph (e)(3) is equal to the excess of—

(i) The amount treated as received by the owner under paragraph (e)(1) of this section; over

(ii) The amount of all economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) plus any consideration described in paragraph (d)(1) of this section paid by the non-owner for such economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (e)(3)(ii) nor paragraph (g)(1)(ii) of this section previously has applied to such economic benefits.

(f) *Other tax consequences*—(1) *Introduction.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, this paragraph (f) sets forth other tax consequences to the owner and non-owner of a life insurance contract that is part of the arrangement for the period prior to the transfer (as defined in paragraph (c)(3) of this section) of the contract (or an undivided interest therein) from the owner to the non-owner. *See* paragraph (g) of this section and § 1.83–6(a)(5) for tax consequences upon the transfer of the contract (or an undivided interest therein).

(2) *Investment in the contract*—(i) *To the non-owner.* A non-owner does not receive any investment in the contract under section 72(e)(6) with respect to a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section.

(ii) *To owner.* Any premium paid by an owner under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section is included in the owner's investment in the contract under section 72(e)(6). No premium or amount

described in paragraph (d) of this section is deductible by the owner (except as otherwise provided in § 1.83–6(a)(5)). Any amount paid by a non-owner, directly or indirectly, to the owner of the life insurance contract for current life insurance protection or for any other economic benefit under the life insurance contract is included in the owner's gross income and is included in the owner's investment in the life insurance contract for purposes of section 72(e)(6) (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

(3) *Treatment of death benefit proceeds*—(i) *Death benefit proceeds to beneficiary (other than the owner).* Any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excluded from gross income by such beneficiary under section 101(a) as an amount received under a life insurance contract to the extent such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d)(1) of this section.

(ii) *Death benefit proceeds to owner as beneficiary.* Any amount paid or payable to an owner in its capacity as a beneficiary by reason of the death of the insured is excluded from gross income of the owner under section 101(a) as an amount received under a life insurance contract to the extent such amount is not allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d)(1) of this section.

(iii) *Transfers of death benefit proceeds.* Death benefit proceeds paid to a party to a split-dollar life insurance arrangement (or the estate or beneficiary of that party) that are not excludable from that party's income under section 101(a) to the extent provided in paragraph (f)(3)(i) or (ii) of this section, are treated as transferred to that party in a separate transaction. The death benefit proceeds treated as so transferred will be taxed in a manner similar to other transfers. For example, if death benefit proceeds paid to an employee, the employee's estate, or the employee's beneficiary are not excludable from the employee's gross income under section 101(a) to the extent provided in paragraph (f)(3)(i) of this section, then such payment is treated as a payment of compensation by the employer to the employee.

(g) *Transfer of entire contract or undivided interest therein*—(1) *In general.* Upon a transfer within the meaning of paragraph (c)(3) of this section of a life insurance contract (or an undivided interest therein) to a non-owner (transferee), the transferee (and the owner (transferor) for gift tax and employment tax purposes) takes into account the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the transferee at that time over the sum of—

(i) The amount the transferee pays to the transferor to obtain the contract (or the undivided interest therein); and

(ii) The amount of all economic benefits described in paragraph (d)(2)(ii) and (iii) of this section actually taken into account by the transferee (and the transferor for gift tax and employment tax purposes), plus any consideration described in paragraph (d)(1) of this section paid by the transferee for such economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (g)(1)(ii) nor paragraph (e)(3)(ii) of this section previously has applied to such economic benefits.

(2) *Determination of fair market value.* For purposes of paragraph (g)(1) of this section, the fair market value of a life insurance contract is the policy cash value and the value of all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than the value of current life insurance protection. Notwithstanding the preceding sentence, the fair market value of a life insurance contract for gift tax purposes is determined under § 25.2512–6(a) of this chapter.

(3) *Exception for certain transfers in connection with the performance of services.* To the extent the ownership of a life insurance contract (or undivided interest in such contract) is transferred in connection with the performance of services, paragraph (g)(1) of this section does not apply until such contract (or undivided interest in such contract) is taxable under section 83. For purposes of paragraph (g)(1) of this section, fair market value is determined disregarding any lapse restrictions and at the time the transfer of such contract (or undivided interest in such contract) is taxable under section 83.

(4) *Treatment of non-owner after transfer*—(i) *In general.* After a transfer of an entire life insurance contract (except when such transfer is in connection with the performance of services and the transfer is not yet taxable under section 83), the person who previously had been the non-owner is treated as the owner of such contract for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A). After the transfer of an undivided interest in a life insurance contract (or, if later, at the time such transfer is taxable under section 83), the person who previously had been the non-owner is treated as the owner of a separate contract consisting of that interest for all purposes, including for purposes of paragraph (b) of this section and for purposes of § 1.61–2(d)(2)(ii)(A).

(ii) *Investment in the contract after transfer*—(A) *In general.* The amount treated as consideration paid to acquire the contract under section 72(g)(1), in order to determine the aggregate premiums paid by the transferee for purposes of section 72(e)(6)(A) after the transfer (or, if later, at the time such transfer is taxable under section 83), equals the greater of the fair market value of the contract or the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section.

(B) *Transfers between a donor and a donee.* In the case of a transfer of a contract between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1), in order to determine the aggregate premiums paid by the transferee for purposes of section 72(e)(6)(A) after the transfer, equals the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section except that—

(*1*) The amount determined under paragraph (g)(1)(i) of this section includes the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor; and

(*2*) The amount of all economic benefits determined under paragraph (g)(1)(ii) of this section actually taken into account by the transferee does not include such benefits to the extent such benefits were excludable from the transferee's gross income at the time of receipt.

(C) *Transfers of an undivided interest in a contract.* If a portion of a contract is transferred to the transferee, then the amount to be included as consideration paid to acquire the contract is determined by multiplying the amount determined under paragraph (g)(4)(ii)(A) of this section (as modified by paragraph (g)(4)(ii)(B) of this section, if the transfer is between a donor and a donee) by a fraction, the numerator of which is the fair market value of the

portion transferred and the denominator of which is the fair market value of the entire contract.

(D) *Example.* The following example illustrates the rules of this paragraph (g)(4)(ii):

Example. (i) In year 1, donor D and donee E enter into a split-dollar life insurance arrangement as defined in paragraph (b)(1) of this section. D is the owner of the life insurance contract under paragraph (c)(1) of this section. The life insurance contract is not a modified endowment contract as defined in section 7702A. In year 5, D gratuitously transfers the contract, within the meaning of paragraph (c)(3) of this section, to E. At the time of the transfer, the fair market value of the contract is $200,000 and D had paid $50,000 in premiums under the arrangement. In addition, by the time of the transfer, E had current access to $80,000 of policy cash value which was excludable from E's gross income under section 102.

(ii) E's investment in the contract is $50,000, consisting of the $50,000 of premiums paid by D. The $80,000 of policy cash value to which E had current access is not included in E's investment in the contract because such amount was excludable from E's gross income when E had current access to that policy cash value.

(iii) *No investment in the contract for current life insurance protection.* Except as provided in paragraph (g)(4)(ii)(B) of this section, no amount allocable to current life insurance protection provided to the transferee (the cost of which was paid by the transferee or the value of which was provided to the transferee) is treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer.

(h) *Examples.* The following examples illustrate the rules of this section. Except as otherwise provided, each of the examples assumes that the employer (R) is the owner (as defined in paragraph (c)(1) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, that the employee (E) is not provided any economic benefits described in paragraph (d)(2)(iii) of this section, that the life insurance contract is not a modified endowment contract under section 7702A, that the compensation paid to E is reasonable, and that E makes no premium payments. The examples are as follows:

Example 1. (i) In year 1, R purchases a life insurance contract on the life of E. R is named as the policy owner of the contract. R and E enter into an arrangement under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or E's death. Upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or the policy cash value of the contract. The balance of the death benefit will be paid to a beneficiary designated by E.

(ii) Because R is designated as the policy owner of the contract, R is the owner of the contract under paragraph (c)(1)(i) of this section. In addition, R would be treated as the owner of the contract regardless of whether of R were designated as the policy owner under paragraph (c)(1)(i) of this section because the split-dollar life insurance arrangement is described in paragraph (c)(1)(ii)(A)(*1*) of this section. E is a non-owner of the contract. Under the arrangement between R and E, a portion of the death benefit is payable to a beneficiary designated by E. The arrangement is a split-dollar life insurance arrangement under paragraph (b)(1) or (2) of this section. Because R pays all the premiums on the life insurance contract, R provides to E the entire amount of the current life insurance protection E receives under the arrangement. Therefore, for each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section the value of current life insurance protection described in paragraph (d)(2)(i) of this section provided to E in each year.

Example 2. (i) The facts are the same as in *Example 1* except that, upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the policy cash value of the contract. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) Because R is designated as the policy owner, R is the owner of the contract under paragraph (c)(1)(i) of this section. E is a non-owner of the contract. For each year that the split-dollar life insurance arrangement is in effect, E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all the premiums on the life insurance contract, R provides to E all the economic benefits that E receives under the arrangement. Therefore, for each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section, the value of all economic benefits described in paragraph (d)(2)(i) and (ii) of this section provided to E in each year.

Example 3. (i) The facts are the same as in *Example 1* except that in year 5, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or one-half the policy cash value of the contract. Under the terms of the modified arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) For each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section the value of the economic benefits described in paragraph (d)(2)(i) of this section provided to E under the arrangement during that year. In year 5 (and subsequent years), E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value. Thus, in year 5 (and each subsequent year), E must also include in gross income under paragraph (d)(1) of this section the value of the economic benefits described in paragraph (d)(2)(ii) of this section provided to E in each year.

(iii) The arrangement is not described in paragraph (c)(1)(ii)(A)(*1*) of this section after it is modified in year 5. Because R is the designated owner of the life insurance contract, R continues to be treated as the owner of the contract under paragraph (c)(1)(ii)(B)(*1*) of this section after the arrangement is modified. In addition, because the modification made by R and E in year 5 does not involve the transfer (within the meaning of paragraph (c)(3) of this section) of an undivided interest in the life insurance contract from R to E, the modification is not a transfer for purposes of paragraph (g) of this section.

Example 4. (i) The facts are the same as in *Example 2* except that in year 7, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R will be paid the lesser of 80 percent of the aggregate premiums or the policy cash value of the contract. Under the terms of the modified arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the lesser of 80 percent of the aggregate premiums paid by R or the policy cash value of the contract.

(ii) Commencing in year 7 (and in each subsequent year), E must include in gross income the economic benefits described in paragraph (d)(2)(ii) of this section as provided in this *Example 4(ii)* rather than as provided in *Example 2(ii).* Thus, in year 7 (and in each subsequent year) E must include in gross income under paragraph (d) of this section, the excess of the policy cash value over the lesser of 80 percent of the aggregate premiums paid by R or the policy cash value of the contract (to the extent E did not actually include such amounts in gross income for a prior taxable year). In addition, in year 7 (and each subsequent year) E must also include in gross income the value of the

economic benefits described in paragraph (d)(2)(i) of this section provided to E under the arrangement during in each such year.

Example 5. (i) The facts are the same as in *Example 3* except that in year 7, E is designated as the policy owner. At that time, E's rights to the contract are substantially vested as defined in § 1.83–3(b).

(ii) In year 7, R is treated as having made a transfer (within the meaning of paragraph (c)(3) of this section) of the life insurance contract to E. E must include in gross income the amount determined under paragraph (g)(1) of this section.

(iii) After the transfer of the contract to E, E is the owner of the contract and any premium payments by R will be included in E's income under paragraph (b)(5) of this section and § 1.61–2(d)(2)(ii)(A) (unless R's payments are split-dollar loans as defined in § 1.7872–15(b)(1)).

Example 6. (i) In year 1, E and R enter into a split-dollar life insurance arrangement as defined in paragraph (b)(2) of this section. Under the arrangement, R is required to make annual premium payments of $10,000 and E is required to make annual premium payments of $500. In year 5, a $500 policy owner dividend payable to E is declared by the insurance company. E directs the insurance company to use the $500 as E's premium payment for year 5.

(ii) For each year the arrangement is in effect, E must include in gross income the value of the economic benefits provided during the year, as required by paragraph (d)(2) of this section, over the $500 premium payments paid by E. In year 5, E must also include in gross income as compensation the excess, if any, of the $500 distributed to E from the proceeds of the policy owner dividend over the amount determined under paragraph (e)(3)(ii) of this section.

(iii) R must include in income the premiums paid by E during the years the split-dollar life insurance arrangement is in effect, including the $500 of the premium E paid in year 5 with proceeds of the policy owner dividend. R's investment in the contract is increased in an amount equal to the premiums paid by E, including the $500 of the premium paid by E in year 5 from the proceeds of the policy owner dividend. In year 5, R is treated as receiving a $500 distribution under the contract, which is taxed pursuant to section 72.

Example 7. (i) The facts are the same as in *Example 2* except that in year 10, E withdraws $100,000 from the cash value of the contract.

(ii) In year 10, R is treated as receiving a $100,000 distribution from the insurance company. This amount is treated as an amount received by R under the contract and taxed pursuant to section 72. This amount reduces R's investment in the contract under section 72(e). R is treated as paying the $100,000 to E as cash compensation, and E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

Example 8. (i) The facts are the same as in *Example 7* except E receives the proceeds of a $100,000 specified policy loan directly from the insurance company.

(ii) The transfer of the proceeds of the specified policy loan to E is treated as a loan by the insurance company to R. Under the rules of section 72(e), the $100,000 loan is not included in R's income and does not reduce R's investment in the contract. R is treated as paying the $100,000 of loan proceeds to E as cash compensation. E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

(i) [Reserved]

(j) *Effective date*—(1) *General rule*—(i) *In general.* This section applies to any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into after September 17, 2003.

(ii) *Determination of when an arrangement is entered into.* For purposes of paragraph (j) of this section, a split-dollar life insurance arrangement is entered into on the latest of the following dates:

(A) The date on which the life insurance contract under the arrangement is issued;

(B) The effective date of the life insurance contract under the arrangement;

(C) The date on which the first premium on the life insurance contract under the arrangement is paid;

(D) The date on which the parties to the arrangement enter into an agreement with regard to the policy; or

(E) The date on which the arrangement satisfies the definition of a split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section).

(2) *Modified arrangements treated as new arrangements*—(i) *In general.* For purposes of paragraph (j)(1) of this section, if an arrangement entered into on or before September 17, 2003 is materially modified after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(ii) *Non-material modifications.* The following is a non-exclusive list of changes that are not material modifications under paragraph (j)(2)(i) of this section (either alone or in conjunction with other changes listed in paragraphs (j)(2)(ii)(A) through (I) of this section)—

(A) A change solely in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(B) A change solely in the beneficiary of the life insurance contract, unless the beneficiary is a party to the arrangement;

(C) A change solely in the interest rate payable under the life insurance contract on a policy loan;

(D) A change solely necessary to preserve the status of the life insurance contract under section 7702;

(E) A change solely to the ministerial provisions of the life insurance contract (for example, a change in the address to send payment);

(F) A change made solely under the terms of any agreement (other than the life insurance contract) that is a part of the split-dollar life insurance arrangement if the change is non-discretionary by the parties and is made pursuant to a binding commitment (whether set forth in the agreement or otherwise) in effect on or before September 17, 2003;

(G) A change solely in the owner of the life insurance contract as a result of a transaction to which section 381(a) applies and in which substantially all of the former owner's assets are transferred to the new owner of the policy;

(H) A change to the policy solely if such change is required by a court or a state insurance commissioner as a result of the insolvency of the insurance company that issued the policy; or

(I) A change solely in the insurance company that administers the policy as a result of an assumption reinsurance transaction between the issuing insurance company and the new insurance company to which the owner and the non-owner were not a party.

(iii) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may provide additional guidance with respect to other modifications that are not material for purposes of paragraph (j)(2)(i) of this section. See § 601.601(d)(2)(ii) of this chapter.

■ **Par. 4.** Section 1.83–1 is amended by:

■ 1. Removing the second sentence of paragraph (a)(2).

■ 2. Adding a sentence at the end of paragraph (a)(2).

The addition reads as follows:

§ 1.83–1 Property transferred in connection with the performance of services.

(a) * * *

(2) *Life insurance.* * * * For the taxation of life insurance protection under a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), see § 1.61–22.

* * * * *

■ **Par. 5.** Section 1.83–3 is amended by:

■ 1. Adding a sentence at the end of paragraph (a)(1).

■ 2. Adding a sentence immediately prior to the last sentence in paragraph (e).

The additions read as follows:

§ 1.83–3 Meaning and use of certain terms.

(a) * * * (1) * * * For special rules applying to the transfer of a life

insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)), *see* § 1.61–22(g).

* * * * *

(e) * * * Notwithstanding the previous sentence, in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) that is entered into, or materially modified (within the meaning of § 1.61–22(j)(2)), after September 17, 2003, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. * * *

* * * * *

■ **Par. 6.** Section 1.83–6 is amended as follows:

■ 1. Redesignating paragraph (a)(5) as paragraph (a)(6).

■ 2. Adding a new paragraph (a)(5).

The addition reads as follows:

§ 1.83–6 Deduction by employer.

(a) * * *

(5) *Transfer of life insurance contract (or an undivided interest therein)*—(i) *General rule.* In the case of a transfer of a life insurance contract (or an undivided interest therein) described in § 1.61–22(c)(3) in connection with the performance of services, a deduction is allowable under paragraph (a)(1) of this section to the person for whom the services were performed. The amount of the deduction, if allowable, is equal to the sum of the amount included as compensation in the gross income of the service provider under § 1.61–22(g)(1) and the amount determined under § 1.61–22(g)(1)(ii).

(ii) *Effective date*—(A) *General rule*—Paragraph (a)(5)(i) of this section applies to any split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) entered into after September 17, 2003. For purposes of this paragraph (a)(5), an arrangement is entered into as determined under § 1.61–22(j)(1)(ii).

(B) *Modified arrangements treated as new arrangements.* If an arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

* * * * *

■ **Par. 7.** In § 1.301–1, paragraph (q) is added to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) *Split-dollar and other life insurance arrangements*—(1) *Split-dollar life insurance arrangements*—(i) *Distribution of economic benefits.* The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in § 1.61–22(b)(1) or (2), of economic benefits described in § 1.61–22(d) or of amounts described in § 1.61–22(e) is treated as a distribution of property, the amount of which is determined under § 1.61–22(d) and (e), respectively.

(ii) *Distribution of entire contract or undivided interest therein.* A transfer (within the meaning of § 1.61–22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to § 1.61–22(g)(1) and (2).

(2) *Other life insurance arrangements.* A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under § 1.61–22(b).

(3) *When distribution is made*—(i) *In general.* Except as provided in paragraph (q)(3)(ii) of this section, paragraph (b) of this section shall apply to determine when a distribution described in paragraph (q)(1) or (2) of this section is taken into account by a shareholder.

(ii) *Exception.* Notwithstanding paragraph (b) of this section, a distribution described in paragraph (q)(1)(ii) of this section shall be treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided interest therein, is transferred (within the meaning of § 1.61–22(c)(3)) to the shareholder.

(4) *Effective date*—(i) *General rule.* This paragraph (q) applies to split-dollar and other life insurance arrangements entered into after September 17, 2003. For purposes of this paragraph (q)(4), a split-dollar life insurance arrangement is entered into as determined under § 1.61–22(j)(1)(ii).

(ii) *Modified arrangements treated as new arrangements.* If a split-dollar life insurance arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

■ **Par. 8.** Section 1.1402(a)–18 is added to read as follows:

§ 1.1402(a)–18 Split-dollar life insurance arrangements.

See §§ 1.61–22 and 1.7872–15 for rules relating to the treatment of split-dollar life insurance arrangements.

■ **Par. 9.** Section 1.7872–15 is added to read as follows:

§ 1.7872–15 Split-dollar loans.

(a) *General rules*—(1) *Introduction.* This section applies to split-dollar loans as defined in paragraph (b)(1) of this section. If a split-dollar loan is not a below-market loan, then, except as provided in this section, the loan is governed by the general rules for debt instruments (including the rules for original issue discount (OID) under sections 1271 through 1275 and the regulations thereunder). If a split-dollar loan is a below-market loan, then, except as provided in this section, the loan is governed by section 7872. The timing, amount, and characterization of the imputed transfers between the lender and borrower of a below-market split-dollar loan depend upon the relationship between the parties and upon whether the loan is a demand loan or a term loan. For additional rules relating to the treatment of split-dollar life insurance arrangements, *see* § 1.61–22.

(2) *Loan treatment*—(i) *General rule.* A payment made pursuant to a split-dollar life insurance arrangement is treated as a loan for Federal tax purposes, and the owner and non-owner are treated, respectively, as the borrower and the lender, if—

(A) The payment is made either directly or indirectly by the non-owner to the owner (including a premium payment made by the non-owner directly or indirectly to the insurance company with respect to the policy held by the owner);

(B) The payment is a loan under general principles of Federal tax law or, if it is not a loan under general principles of Federal tax law (for example, because of the nonrecourse nature of the obligation or otherwise), a reasonable person nevertheless would expect the payment to be repaid in full to the non-owner (whether with or without interest); and

(C) The repayment is to be made from, or is secured by, the policy's death

benefit proceeds, the policy's cash surrender value, or both.

(ii) *Payments that are only partially repayable.* For purposes of § 1.61–22 and this section, if a non-owner makes a payment pursuant to a split-dollar life insurance arrangement and the non-owner is entitled to repayment of some but not all of the payment, the payment is treated as two payments: One that is repayable and one that is not. Thus, paragraph (a)(2)(i) of this section refers to the repayable payment.

(iii) *Treatment of payments that are not split-dollar loans. See* § 1.61–22(b)(5) for the treatment of payments by a non-owner that are not split-dollar loans.

(iv) *Examples.* The provisions of this paragraph (a)(2) are illustrated by the following examples:

Example 1. Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement, the employer makes premium payments on this policy, there is a reasonable expectation that the payments will be repaid, and the repayments are secured by the policy. Under paragraph (a)(2)(i) of this section, each premium payment is a loan for Federal tax purposes.

Example 2. (i) Assume an employee owns a life insurance policy under a split-dollar life insurance arrangement and the employer makes premium payments on this policy. The employer is entitled to be repaid 80 percent of each premium payment, and the repayments are secured by the policy. Under paragraph (a)(2)(ii) of this section, the taxation of 20 percent of each premium payment is governed by § 1.61–22(b)(5). If there is a reasonable expectation that the remaining 80 percent of a payment will be repaid in full, then, under paragraph (a)(2)(i) of this section, the 80 percent is a loan for Federal tax purposes.

(ii) If less than 80 percent of a premium payment is reasonably expected to be repaid, then this paragraph (a)(2) does not cause any of the payment to be a loan for Federal tax purposes. If the payment is not a loan under general principles of Federal tax law, the taxation of the entire premium payment is governed by § 1.61–22(b)(5).

(3) *No de minimis exceptions.* For purposes of this section, section 7872 is applied to a split-dollar loan without regard to the *de minimis* exceptions in section 7872(c)(2) and (3).

(4) *Certain interest provisions disregarded*—(i) *In general.* If a split-dollar loan provides for the payment of interest and all or a portion of the interest is to be paid directly or indirectly by the lender (or a person related to the lender), then the requirement to pay the interest (or portion thereof) is disregarded for purposes of this section. All of the facts and circumstances determine whether a payment to be made by the lender (or a person related to the lender) is sufficiently independent from the split-dollar loan for the payment to not be an indirect payment of the interest (or a portion thereof) by the lender (or a person related to the lender).

(ii) *Examples.* The provisions of this paragraph (a)(4) are illustrated by the following examples:

Example 1— (i) On January 1, 2009, Employee *B* issues a split-dollar term loan to Employer *Y*. The split-dollar term loan provides for five percent interest, compounded annually. Interest and principal on the split-dollar term loan are due at maturity. On January 1, 2009, *B* and *Y* also enter into a fully vested non-qualified deferred compensation arrangement that will provide a payment to *B* in an amount equal to the accrued but unpaid interest due at the maturity of the split-dollar term loan.

(ii) Under paragraph (a)(4)(i) of this section, *B*'s requirement to pay interest on the split-dollar term loan is disregarded for purposes of this section, and the split-dollar term loan is treated as a loan that does not provide for interest for purposes of this section.

Example 2— (i) On January 1, 2004, Employee *B* and Employer *Y* enter into a fully vested non-qualified deferred compensation arrangement that will provide a payment to *B* equal to *B*'s salary in the three years preceding the retirement of *B*. On January 1, 2009, *B* and *Y* enter into a split-dollar life insurance arrangement and, under the arrangement, *B* issues a split-dollar term loan to *Y* on that date. The split-dollar term loan provides for five percent interest, compounded annually. Interest and principal on the split-dollar term loan are due at maturity. Over the period in which the non-qualified deferred compensation arrangement is effective, the terms and conditions of *B*'s non-qualified deferred compensation arrangement do not change in a way that indicates that the payment of the non-qualified deferred compensation is related to *B*'s requirement to pay interest on the split-dollar term loan. No other facts and circumstances exist to indicate that the payment of the non-qualified deferred compensation is related to *B*'s requirement to pay interest on the split-dollar term loan.

(ii) The facts and circumstances indicate that the payment by *Y* of non-qualified deferred compensation is independent from *B*'s requirement to pay interest under the split-dollar term loan. Under paragraph (a)(4)(i) of this section, the fully vested non-qualified deferred compensation does not cause *B*'s requirement to pay interest on the split-dollar term loan to be disregarded for purposes of this section. For purposes of this section, the split-dollar term loan is treated as a loan that provides for stated interest of five percent, compounded annually.

(b) *Definitions.* For purposes of this section, the terms *split-dollar life insurance arrangement*, *owner*, and *non-owner* have the same meanings as provided in § 1.61–22(b) and (c). In addition, the following definitions apply for purposes of this section:

(1) A *split-dollar loan* is a loan described in paragraph (a)(2)(i) of this section.

(2) A *split-dollar demand loan* is any split-dollar loan that is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand).

(3) A *split-dollar term loan* is any split-dollar loan other than a split-dollar demand loan. See paragraph (e)(5) of this section for special rules regarding certain split-dollar term loans payable on the death of an individual, certain split-dollar term loans conditioned on the future performance of substantial services by an individual, and gift split-dollar term loans.

(c) *Interest deductions for split-dollar loans.* The borrower may not deduct any qualified stated interest, OID, or imputed interest on a split-dollar loan. *See* sections 163(h) and 264(a). In certain circumstances, an indirect participant may be allowed to deduct qualified stated interest, OID, or imputed interest on a deemed loan. See paragraph (e)(2)(iii) of this section (relating to indirect loans).

(d) *Treatment of split-dollar loans providing for nonrecourse payments*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this section. *See* paragraph (j) of this section for the treatment of a split-dollar loan that provides for one or more contingent payments.

(2) *Exception for certain loans with respect to which the parties to the split-dollar life insurance arrangement make a representation*—(i) *Requirement.* An otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under this section if the parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made.

(ii) *Time and manner for providing written representation.* The Commissioner may prescribe the time and manner for providing the written representation required by paragraph (d)(2)(i) of this section. Until the Commissioner prescribes otherwise, the written representation that is required by paragraph (d)(2)(i) of this section must meet the requirements of this paragraph (d)(2)(ii). Both the borrower and the lender must sign the representation not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender

makes the first split-dollar loan under the split-dollar life insurance arrangement. This representation must include the names, addresses, and taxpayer identification numbers of the borrower, lender, and any indirect participants. Unless otherwise stated therein, this representation applies to all subsequent split-dollar loans made pursuant to the split-dollar life insurance arrangement. Each party should retain an original of the representation as part of its books and records and should attach a copy of this representation to its Federal income tax return for any taxable year in which the lender makes a loan to which the representation applies.

(e) *Below-market split-dollar loans*—(1) *Scope*—(i) *In general*. This paragraph (e) applies to below-market split-dollar loans enumerated under section 7872(c)(1), which include gift loans, compensation-related loans, and corporation-shareholder loans. The characterization of a split-dollar loan under section 7872(c)(1) and of the imputed transfers under section 7872(a)(1) and (b)(1) depends upon the relationship between the lender and the borrower or the lender, borrower, and any indirect participant. For example, if the lender is the borrower's employer, the split-dollar loan is generally a compensation-related loan, and any imputed transfer from the lender to the borrower is generally a payment of compensation. The loans covered by this paragraph (e) include indirect loans between the parties. *See* paragraph (e)(2) of this section for the treatment of certain indirect split-dollar loans. *See* paragraph (f) of this section for the treatment of any stated interest or OID on split-dollar loans. *See* paragraph (j) of this section for additional rules that apply to a split-dollar loan that provides for one or more contingent payments.

(ii) *Significant-effect split-dollar loans*. If a direct or indirect below-market split-dollar loan is not enumerated in section 7872(c)(1)(A), (B), or (C), the loan is a significant-effect loan under section 7872(c)(1)(E).

(2) *Indirect split-dollar loans*—(i) *In general*. If, based on all the facts and circumstances, including the relationship between the borrower or lender and some third person (the indirect participant), the effect of a below-market split-dollar loan is to transfer value from the lender to the indirect participant and from the indirect participant to the borrower, then the below-market split-dollar loan is restructured as two or more successive below-market loans (the deemed loans) as provided in this paragraph (e)(2). The transfers of value described in the preceding sentence include (but are not limited to) a gift, compensation, a capital contribution, and a distribution under section 301 (or, in the case of an S corporation, under section 1368). The deemed loans are—

(A) A deemed below-market split-dollar loan made by the lender to the indirect participant; and

(B) A deemed below-market split-dollar loan made by the indirect participant to the borrower.

(ii) *Application*. Each deemed loan is treated as having the same provisions as the original loan between the lender and borrower, and section 7872 is applied to each deemed loan. Thus, for example, if, under a split-dollar life insurance arrangement, an employer (lender) makes an interest-free split-dollar loan to an employee's child (borrower), the loan is restructured as a deemed compensation-related below-market split-dollar loan from the lender to the employee (the indirect participant) and a second deemed gift below-market split-dollar loan from the employee to the employee's child. In appropriate circumstances, section 7872(d)(1) may limit the interest that accrues on a deemed loan for Federal income tax purposes. For loan arrangements between husband and wife, *see* section 7872(f)(7).

(iii) *Limitations on investment interest for purposes of section 163(d)*. For purposes of section 163(d), the imputed interest from the indirect participant to the lender that is taken into account by the indirect participant under this paragraph (e)(2) is not investment interest to the extent of the excess, if any, of—

(A) The imputed interest from the indirect participant to the lender that is taken into account by the indirect participant; over

(B) The imputed interest to the indirect participant from the borrower that is recognized by the indirect participant.

(iv) *Examples*. The provisions of this paragraph (e)(2) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *X* and Individual *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. *A* is the child of *B*, an employee of *X*. On January 1, 2009, *X* makes a $30,000 premium payment, repayable upon demand without interest. Repayment of the premium payment is fully recourse to *A*. The payment is a below-market split-dollar demand loan. *A*'s net investment income for 2009 is $1,100, and there are no other outstanding loans between *A* and *B*. Assume that the blended annual rate for 2009 is 5 percent, compounded annually.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *A* is to transfer value from *X* to *B* and then to transfer value from *B* to *A*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *A* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *A*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *A* in 2009 is $1,500 ([$30,000 × 0.05]—0). Under section 7872(d)(1), however, the amount of forgone interest deemed paid to *B* by *A* is limited to $1,100 (*A*'s net investment income for the year). Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is limited to $1,100 (the interest deemed received from *A*).

Example 2. (i) The facts are the same as the facts in *Example 1*, except that *T*, an irrevocable life insurance trust established for the benefit of *A* (*B*'s child), is named as the policy owner. *T* is not a grantor trust.

(ii) Based on the relationships among the parties, the effect of the below-market split-dollar loan from *X* to *T* is to transfer value from *X* to *B* and then to transfer value from *B* to *T*. Under paragraph (e)(2) of this section, the below-market split-dollar loan from *X* to *T* is restructured as two deemed below-market split-dollar demand loans: a compensation-related below-market split-dollar loan between *X* and *B* and a gift below-market split-dollar loan between *B* and *T*. Each of the deemed loans has the same terms and conditions as the original loan.

(iii) Under paragraph (e)(3) of this section, the amount of forgone interest deemed paid to *B* by *T* in 2009 is $1,500 ([$30,000 × 0.05]—0). Section 7872(d)(1) does not apply because *T* is not an individual. The amount of forgone interest deemed paid to *B* by *T* is $1,500. Under paragraph (e)(2)(iii) of this section, *B*'s deduction under section 163(d) in 2009 for interest deemed paid on *B*'s deemed loan from *X* is $1,500 (the interest deemed received from *T*).

(3) *Split-dollar demand loans*—(i) *In general*. This paragraph (e)(3) provides rules for testing split-dollar demand loans for sufficient interest, and, if the loans do not provide for sufficient interest, rules for the calculation and treatment of forgone interest on these loans. *See* paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing for sufficient interest*. Each calendar year that a split-dollar demand loan is outstanding, the loan is tested to determine if the loan provides for sufficient interest. A split-dollar demand loan provides for sufficient interest for the calendar year if the rate (based on annual compounding) at

which interest accrues on the loan's adjusted issue price during the year is no lower than the blended annual rate for the year. (The Internal Revenue Service publishes the blended annual rate in the Internal Revenue Bulletin in July of each year (*see* § 601.601(d)(2)(ii) of this chapter).) If the loan does not provide for sufficient interest, the loan is a below-market split-dollar demand loan for that calendar year. *See* paragraph (e)(3)(iii) of this section to determine the amount and treatment of forgone interest for each calendar year the loan is below-market.

(iii) *Imputations*—(A) *Amount of forgone interest.* For each calendar year, the amount of forgone interest on a split-dollar demand loan is treated as transferred by the lender to the borrower and as retransferred as interest by the borrower to the lender. This amount is the excess of—

(*1*) The amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price at the blended annual rate (determined in paragraph (e)(3)(ii) of this section) and were payable annually on the day referred to in paragraph (e)(3)(iii)(B) of this section; over

(*2*) Any interest that accrues on the loan during the year.

(B) *Timing of transfers of forgone interest*—(*1*) *In general.* Except as provided in paragraphs (e)(3)(iii)(B)(*2*) and (*3*) of this section, the forgone interest (as determined under paragraph (e)(3)(iii)(A) of this section) that is attributable to a calendar year is treated as transferred by the lender to the borrower (and retransferred as interest by the borrower to the lender) on the last day of the calendar year and is accounted for by each party to the split-dollar loan in a manner consistent with that party's method of accounting.

(*2*) *Exception for death, liquidation, or termination of the borrower.* In the taxable year in which the borrower dies (in the case of a borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the last day of the borrower's final taxable year.

(3) *Exception for repayment of below-market split-dollar loan.* Any forgone interest is treated, for both the lender and the borrower, as transferred and retransferred on the day the split-dollar loan is repaid in full.

(4) *Split-dollar term loans*—(i) *In general.* Except as provided in paragraph (e)(5) of this section, this paragraph (e)(4) provides rules for testing split-dollar term loans for sufficient interest and, if the loans do not provide for sufficient interest, rules for imputing payments on these loans. *See* paragraph (g) of this section for additional rules that apply to a split-dollar loan providing for certain variable rates of interest.

(ii) *Testing a split-dollar term loan for sufficient interest.* A split-dollar term loan is tested on the day the loan is made to determine if the loan provides for sufficient interest. A split-dollar term loan provides for sufficient interest if the imputed loan amount equals or exceeds the amount loaned. The imputed loan amount is the present value of all payments due under the loan, determined as of the date the loan is made, using a discount rate equal to the AFR in effect on that date. The AFR used for purposes of the preceding sentence must be appropriate for the loan's term (short-term, mid-term, or long-term) and for the compounding period used in computing the present value. *See* section 1274(d)(1). If the split-dollar loan does not provide for sufficient interest, the loan is a below-market split-dollar term loan subject to paragraph (e)(4)(iv) of this section.

(iii) *Determining loan term.* This paragraph (e)(4)(iii) provides rules to determine the term of a split-dollar term loan for purposes of paragraph (e)(4)(ii) of this section. The term of the loan determined under this paragraph (e)(4)(iii) (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(A) *In general.* Except as provided in paragraph (e)(4)(iii)(B), (C), (D) or (E) of this section, the term of a split-dollar term loan is based on the period from the date the loan is made until the loan's stated maturity date.

(B) *Special rules for certain options*—(*1*) *Payment schedule that minimizes yield.* If a split-dollar term loan is subject to one or more unconditional options that are exercisable at one or more times during the term of the loan and that, if exercised, require payments to be made on the split-dollar loan on an alternative payment schedule (for example, an option to extend or an option to call a split-dollar loan), then the rules of this paragraph (e)(4)(iii)(B)(*1*) determine the term of the loan. However, this paragraph (e)(4)(iii)(B)(*1*) applies only if the timing and amounts of the payments that comprise each payment schedule are known as of the issue date. For purposes of determining a split-dollar loan's term, the borrower is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. Similarly, the lender is projected to exercise or not exercise an option or combination of options in a manner that minimizes the loan's overall yield. If different projected patterns of exercise or non-exercise produce the same minimum yield, the parties are projected to exercise or not exercise an option or combination of options in a manner that produces the longest term.

(*2*) *Change in circumstances.* If the borrower (or lender) does or does not exercise the option as projected under paragraph (e)(4)(iii)(B)(*1*) of this section, the split-dollar loan is treated for purposes of this section as retired and reissued on the date the option is or is not exercised for an amount of cash equal to the loan's adjusted issue price on that date. The reissued loan must be retested using the appropriate AFR in effect on the date of reissuance to determine whether it is a below-market loan.

(*3*) *Examples.* The following examples illustrate the rules of this paragraph (e)(4)(iii)(B):

Example 1. Employee *B* issues a 10-year split-dollar term loan to Employer *Y. B* has the right to prepay the loan at the end of year 5. Interest is payable on the split-dollar loan at 1 percent for the first 5 years and at 10 percent for the remaining 5 years. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 5-year split-dollar term loan from *Y* to *B,* with interest payable at 1 percent.

Example 2. The facts are the same as the facts in *Example 1,* except that B does not in fact prepay the split-dollar loan at the end of year 5. Under paragraph (e)(4)(iii)(B)(*2*) of this section, the first loan is treated as retired at the end of year 5 and a new 5-year split-dollar term loan is issued at that time, with interest payable at 10 percent.

Example 3. Employee *A* issues a 10-year split-dollar term loan on which the lender, Employer *X,* has the right to demand payment at the end of year 2. Interest is payable on the split-dollar loan at 7 percent each year that the loan is outstanding. Under paragraph (e)(4)(iii)(B)(*1*) of this section, this arrangement is treated as a 10-year split-dollar term loan because the exercise of *X*'s put option would not reduce the yield of the loan (the yield of the loan is 7 percent, compounded annually, whether or not *X* demands payment).

(C) *Split-dollar term loans providing for certain variable rates of interest.* If a split-dollar term loan is subject to paragraph (g) of this section (a split-dollar loan that provides for certain variable rates of interest), the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (g)(3)(ii) of this section.

(D) *Split-dollar loans payable upon the death of an individual.* If a split-

dollar term loan is described in paragraph (e)(5)(ii)(A) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(E) *Split-dollar loans conditioned on the future performance of substantial services by an individual.* If a split-dollar term loan is described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A) of this section, the term of the loan for purposes of paragraph (e)(4)(ii) of this section is determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(iv) *Timing and amount of imputed transfer in connection with below-market split-dollar term loans.* If a split-dollar term loan is a below-market loan, then the rules applicable to below-market term loans under section 7872 apply. In general, the loan is recharacterized as consisting of two portions: an imputed loan amount (as defined in paragraph (e)(4)(ii) of this section) and an imputed transfer from the lender to the borrower. The imputed transfer occurs at the time the loan is made (for example, when the lender makes a premium payment on a life insurance policy) and is equal to the excess of the amount loaned over the imputed loan amount.

(v) *Amount treated as OID.* In the case of any below-market split-dollar term loan described in this paragraph (e)(4), for purposes of applying sections 1271 through 1275 and the regulations thereunder, the issue price of the loan is the amount determined under § 1.1273–2, reduced by the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section. Thus, the loan is generally treated as having OID in an amount equal to the amount of the imputed transfer described in paragraph (e)(4)(iv) of this section, in addition to any other OID on the loan (determined without regard to section 7872(b)(2)(A) or this paragraph (e)(4)).

(vi) *Example.* The provisions of this paragraph (e)(4) are illustrated by the following example:

Example. (i) On July 1, 2009, Corporation *Z* and Shareholder *A* enter into a split-dollar life insurance arrangement under which *A* is named as the policy owner. On July 1, 2009, *Z* makes a $100,000 premium payment, repayable without interest in 15 years. Repayment of the premium payment is fully recourse to *A*. The premium payment is a split-dollar term loan. Assume the long-term AFR (based on annual compounding) at the time the loan is made is 7 percent.

(ii) Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. This loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Z*) is less than the amount loaned ($100,000).

(iii) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the date that the loan is made, *Z* is treated as transferring to *A* $63,755.40 (the excess of $100,000 (amount loaned) over $36,244.60 (imputed loan amount)). Under section 7872 and paragraph (e)(1)(i) of this section, *Z* is treated as making a section 301 distribution to *A* on July 1, 2009, of $63,755.40. *Z* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

(5) *Special rules for certain split-dollar term loans*—(i) *In general.* This paragraph (e)(5) provides rules for split-dollar loans payable on the death of an individual, split-dollar loans conditioned on the future performance of substantial services by an individual, and gift term loans. These split-dollar loans are split-dollar term loans for purposes of determining whether the loan provides for sufficient interest. If, however, the loan is a below-market split-dollar loan, then, except as provided in paragraph (e)(5)(v) of this section, forgone interest is determined annually, similar to a demand loan, but using an AFR that is appropriate for the loan's term and that is determined when the loan is issued.

(ii) *Split-dollar loans payable not later than the death of an individual*—(A) *Applicability.* This paragraph (e)(5)(ii) applies to a split-dollar term loan payable not later than the death of an individual.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(ii)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan, and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan, and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(ii)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(ii)(B) of this section, the term of a split-dollar loan payable on the death of an individual (including the death of the last survivor of a group of individuals) is the individual's life expectancy as determined under the appropriate table in § 1.72–9 on the day the loan is made. If a split-dollar loan is payable on the earlier of the individual's death or another term determined under paragraph (e)(4)(iii) of this section, the term of the loan is whichever term is shorter.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(ii)(A) of this section remains outstanding longer than the term determined under paragraph (e)(5)(ii)(C) of this section because the individual outlived his or her life expectancy, the split-dollar loan is treated for purposes of this section as retired and reissued as a split-dollar demand loan at that time for an amount of cash equal to the loan's adjusted issue price on that date. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of determining forgone interest under paragraph (e)(5)(ii)(B) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(ii)(B) of this section on the day the loan was originally made.

(iii) *Split-dollar loans conditioned on the future performance of substantial services by an individual*—(A) *Applicability*—(*1*) *In general.* This paragraph (e)(5)(iii) applies to a split-dollar term loan if the benefits of the interest arrangements of the loan are not transferable and are conditioned on the future performance of substantial services (within the meaning of section 83) by an individual.

(*2*) *Exception.* Notwithstanding paragraph (e)(5)(iii)(A)(*1*) of this section, this paragraph (e)(5)(iii) does not apply to a split-dollar loan described in paragraph (e)(5)(v)(A) of this section (regarding a split-dollar loan that is payable on the later of a term certain and the date on which the condition to perform substantial future services by an individual ends).

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. Except as provided in paragraph (e)(5)(iii)(D) of this section, if the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not

provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(iii)(C) of this section to determine the loan's term.

(C) *Term of loan.* The term of a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section is based on the period from the date the loan is made until the loan's stated maturity date. However, if a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section does not have a stated maturity date, the term of the loan is presumed to be seven years.

(D) *Retirement and reissuance of loan.* If a split-dollar loan described in paragraph (e)(5)(iii)(A)(*1*) of this section remains outstanding longer than the term determined under paragraph (e)(5)(iii)(C) of this section because of the continued performance of substantial services, the split-dollar loan is treated for purposes of this section as retired and reissued as a split-dollar demand loan at that time for an amount of cash equal to the loan's adjusted issue price on that date. The loan is retested at that time to determine whether the loan provides for sufficient interest.

(iv) *Gift split-dollar term loans*—(A) *Applicability.* This paragraph (e)(5)(iv) applies to gift split-dollar term loans.

(B) *Treatment of loan.* A split-dollar loan described in paragraph (e)(5)(iv)(A) of this section is tested under paragraph (e)(4)(ii) of this section to determine if the loan provides for sufficient interest. If the loan provides for sufficient interest, then section 7872 does not apply to the loan and the interest on the loan is taken into account under paragraph (f) of this section. If the loan does not provide for sufficient interest, then section 7872 applies to the loan and the loan is treated as a below-market demand loan subject to paragraph (e)(3)(iii) of this section. For each year that the loan is outstanding, however, the rate used in the determination of forgone interest under paragraph (e)(3)(iii) of this section is not the blended annual rate but rather is the AFR (based on annual compounding) appropriate for the loan's term as of the month in which the loan is made. *See* paragraph (e)(5)(iv)(C) of this section to determine the loan's term.

(C) *Term of loan.* For purposes of paragraph (e)(5)(iv)(B) of this section, the term of a gift split-dollar term loan is the term determined under paragraph (e)(4)(iii) of this section.

(D) *Limited application for gift split-dollar term loans.* The rules of paragraph (e)(5)(iv)(B) of this section apply to a gift split-dollar term loan only for Federal income tax purposes. For purposes of Chapter 12 of the Internal Revenue Code (relating to the gift tax), gift below-market split-dollar term loans are treated as term loans under section 7872(b) and paragraph (e)(4) of this section. *See* section 7872(d)(2).

(v) *Split-dollar loans payable on the later of a term certain and another specified date*—(A) *Applicability.* This paragraph (e)(5)(v) applies to any split-dollar term loan payable upon the later of a term certain or—

(*1*) The death of an individual; or

(*2*) For a loan described in paragraph (e)(5)(iii)(A)(*1*) of this section, the date on which the condition to perform substantial future services by an individual ends.

(B) *Treatment of loan*—(*1*) *In general.* A split-dollar loan described in paragraph (e)(5)(v)(A) of this section is a split-dollar term loan, subject to paragraph (e)(4) of this section.

(*2*) *Term of the loan.* The term of a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is the term certain.

(*3*) *Appropriate AFR.* The appropriate AFR for a split-dollar loan described in paragraph (e)(5)(v)(A) of this section is based on a term of the longer of the term certain or the loan's expected term as determined under either paragraph (e)(5) (ii) or (iii) of this section, whichever is applicable.

(C) *Retirement and reissuance.* If a split-dollar loan described in paragraph (e)(5)(v)(A) of this section remains outstanding longer than the term certain, the split-dollar loan is treated for purposes of this section as retired and reissued at the end of the term certain for an amount of cash equal to the loan's adjusted issue price on that date. The reissued loan is subject to paragraph (e)(5) (ii) or (iii) of this section, whichever is applicable. However, the loan is not retested at that time to determine whether the loan provides for sufficient interest. For purposes of paragraph (e)(3)(iii) of this section, the appropriate AFR for the reissued loan is the AFR determined under paragraph (e)(5)(v)(B)(*3*) of this section on the day the loan was originally made.

(vi) *Example.* The provisions of this paragraph (e)(5) are illustrated by the following example:

Example. (i) On January 1, 2009, Corporation *Y* and Shareholder *B*, a 65 year-old male, enter into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* makes a $100,000 premium payment, repayable, without interest, from the death benefits of the underlying contract upon *B*'s death. The premium payment is a split-dollar term loan. Repayment of the premium payment is fully recourse to *B*. Assume the long-term AFR (based on annual compounding) at the time of the loan is 7 percent. Both *Y* and *B* use the calendar year as their taxable years.

(ii) Based on Table 1 in § 1.72–9, the expected term of the loan is 15 years. Under paragraph (e)(5)(ii)(C) of this section, the long-term AFR (based on annual compounding) is the appropriate test rate. Based on a 15-year term and a discount rate of 7 percent, compounded annually (the long-term AFR), the present value of the payments under the loan is $36,244.60, determined as follows: $100,000/[1+(0.07/1)]^{15}. Under paragraph (e)(5)(ii)(B) of this section, this loan is a below-market split-dollar term loan because the imputed loan amount of $36,244.60 (the present value of the amount required to be repaid to *Y*) is less than the amount loaned ($100,000).

(iii) Under paragraph (e)(5)(ii)(B) of this section, the amount of forgone interest for 2009 (and each subsequent full calendar year that the loan remains outstanding) is $7,000, which is the amount of interest that would have been payable on the loan for the calendar year if interest accrued on the loan's adjusted issue price ($100,000) at the long-term AFR (7 percent, compounded annually). Under section 7872 and paragraph (e)(1)(i) of this section, on December 31, 2009, *Y* is treated as making a section 301 distribution to *B* of $7,000. In addition, *Y* has $7,000 of imputed interest income for 2009.

(f) *Treatment of stated interest and OID for split-dollar loans*—(1) *In general.* If a split-dollar loan provides for stated interest or OID, the loan is subject to this paragraph (f), regardless of whether the split-dollar loan has sufficient interest. Except as otherwise provided in this section, split-dollar loans are subject to the same Internal Revenue Code and regulatory provisions for stated interest and OID as other loans. For example, the lender of a split-dollar loan that provides for stated interest must account for any qualified stated interest (as defined in § 1.1273–1(c)) under its regular method of accounting (for example, an accrual method or the cash receipts and disbursements method). *See* § 1.446–2 to determine the amount of qualified stated interest that accrues during an accrual period. In addition, the lender must account under § 1.1272–1 for any OID on a split-dollar loan. However,

§ 1.1272–1(c) does not apply to any split-dollar loan. *See* paragraph (h) of this section for a subsequent waiver, cancellation, or forgiveness of stated interest on a split-dollar loan.

(2) *Term, payment schedule, and yield.* The term of a split-dollar term loan determined under paragraph (e)(4)(iii) of this section (other than paragraph (e)(4)(iii)(C) of this section) applies to determine the split-dollar loan's term, payment schedule, and yield for all purposes of this section.

(g) *Certain variable rates of interest*—(1) *In general.* This paragraph (g) provides rules for a split-dollar loan that provides for certain variable rates of interest. If this paragraph (g) does not apply to a variable rate split-dollar loan, the loan is subject to the rules in paragraph (j) of this section for split-dollar loans that provide for one or more contingent payments.

(2) *Applicability*—(i) *In general.* Except as provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to a split-dollar loan that is a variable rate debt instrument (within the meaning of § 1.1275–5) and that provides for stated interest at a qualified floating rate (or rates).

(ii) *Interest rate restrictions.* This paragraph (g) does not apply to a split-dollar loan if, as a result of interest rate restrictions (such as an interest rate cap), the expected yield of the loan taking the restrictions into account is significantly less than the expected yield of the loan without regard to the restrictions. Conversely, if reasonably symmetric interest rate caps and floors or reasonably symmetric governors are fixed throughout the term of the loan, these restrictions generally do not prevent this paragraph (g) from applying to the loan.

(3) *Testing for sufficient interest*—(i) *Demand loan.* For purposes of paragraph (e)(3)(ii) of this section (regarding testing a split-dollar demand loan for sufficient interest), a split-dollar demand loan is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate as of the beginning of the calendar year that contains the last day of the accrual period.

(ii) *Term loan.* For purposes of paragraph (e)(4)(ii) of this section (regarding testing a split-dollar term loan for sufficient interest), a split-dollar term loan subject to this paragraph (g) is treated as if it provided for a fixed rate of interest for each accrual period to which a qualified floating rate applies. The projected fixed rate for each accrual period is the value of the qualified floating rate on the date the split-dollar term loan is made. The term of a split-dollar loan that is subject to this paragraph (g)(3)(ii) is determined using the rules in § 1.1274–4(c)(2). For example, if the loan provides for interest at a qualified floating rate that adjusts at varying intervals, the term of the loan is determined by reference to the longest interval between interest adjustment dates. *See* paragraph (e)(5) of this section for special rules relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual.

(4) *Interest accruals and imputed transfers.* For purposes of paragraphs (e) and (f) of this section, the projected fixed rate or rates determined under paragraph (g)(3) of this section are used for purposes of determining the accrual of interest each period and the amount of any imputed transfers. Appropriate adjustments are made to the interest accruals and any imputed transfers to take into account any difference between the projected fixed rate and the actual rate.

(5) *Example.* The provisions of this paragraph (g) are illustrated by the following example:

Example. (i) On January 1, 2010, Employer *V* and Employee *F* enter into a split-dollar life insurance arrangement under which *F* is named as the policy owner. On January 1, 2010, *V* makes a $100,000 premium payment, repayable in 15 years. The premium payment is a split-dollar term loan. Under the arrangement between the parties, interest is payable on the split-dollar loan each year on January 1, starting January 1, 2011, at a rate equal to the value of 1-year LIBOR as of the payment date. The short-term AFR (based on annual compounding) at the time of the loan is 7 percent. Repayment of both the premium payment and the interest due thereon is nonrecourse to *F*. However, the parties made a representation under paragraph (d)(2) of this section. Assume that the value of 1-year LIBOR on January 1, 2010, is 8 percent, compounded annually.

(ii) The loan is subject to this paragraph (g) because the loan is a variable rate debt instrument that bears interest at a qualified floating rate. Because the interest rate is reset each year, under paragraph (g)(3)(ii) of this section, the short-term AFR (based on annual compounding) is the appropriate test rate used to determine whether the loan provides for sufficient interest. Moreover, under paragraph (g)(3)(ii) of this section, to determine whether the loan provides for sufficient interest, the loan is treated as if it provided for a fixed rate of interest equal to 8 percent, compounded annually. Based on a discount rate of 7 percent, compounded annually (the short-term AFR), the present value of the payments under the loan is $109,107.91. The loan provides for sufficient interest because the loan's imputed loan amount of $109,107.91 (the present value of the payments) is more than the amount loaned of $100,000. Therefore, the loan is not a below-market split-dollar term loan, and interest on the loan is taken into account under paragraph (f) of this section.

(h) *Adjustments for interest paid at less than the stated rate*—(1) *Application*—(i) *In general.* To the extent required by this paragraph (h), if accrued but unpaid interest on a split-dollar loan is subsequently waived, cancelled, or forgiven by the lender, then the waiver, cancellation, or forgiveness is treated as if, on that date, the interest had in fact been paid to the lender and retransferred by the lender to the borrower. The amount deemed transferred and retransferred is determined under paragraph (h) (2) or (3) of this section. Except as provided in paragraph (h)(1)(iv) of this section, the amount treated as retransferred by the lender to the borrower under paragraph (h) (2) or (3) of this section is increased by the deferral charge determined under paragraph (h)(4) of this section. To determine the character of any retransferred amount, *see* paragraph (e)(1)(i) of this section. *See* § 1.61–22(b)(6) for the treatment of amounts other than interest on a split-dollar loan that are waived, cancelled, or forgiven by the lender.

(ii) *Certain split-dollar term loans.* For purposes of this paragraph (h), a split-dollar term loan described in paragraph (e)(5) of this section (for example, a split-dollar term loan payable not later than the death of an individual) is subject to the rules of paragraph (h)(3) of this section.

(iii) *Payments treated as a waiver, cancellation, or forgiveness.* For purposes of this paragraph (h), if a payment by the lender (or a person related to the lender) to the borrower is, in substance, a waiver, cancellation, or forgiveness of accrued but unpaid interest, the payment by the lender (or person related to the lender) is treated as an amount retransferred to the borrower by the lender under this paragraph (h) and is subject to the deferral charge in paragraph (h)(4) of this section to the extent that the payment is, in substance, a waiver, cancellation, or forgiveness of accrued but unpaid interest.

(iv) *Treatment of certain nonrecourse split-dollar loans.* For purposes of this paragraph (h), if the parties to a split-dollar life insurance arrangement make the representation described in paragraph (d)(2) of this section and the interest actually paid on the split-dollar loan is less than the interest required to be accrued on the split-dollar loan, the excess of the interest required to be accrued over the interest actually paid

is treated as waived, cancelled, or forgiven by the lender under this paragraph (h). However, the amount treated as retransferred under paragraph (h)(1)(i) of this section is not increased by the deferral charge in paragraph (h)(4) of this section.

(2) *Split-dollar term loans.* In the case of a split-dollar term loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is determined as follows:

(i) If the loan's stated rate is less than or equal to the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess of the amount of interest payable at the stated rate over the interest actually paid.

(ii) If the loan's stated rate is greater than the appropriate AFR (the AFR used to test the loan for sufficient interest under paragraph (e) of this section), the amount of interest deemed transferred and retransferred pursuant to this paragraph (h) is the excess, if any, of the amount of interest payable at the AFR over the interest actually paid.

(3) *Split-dollar demand loans.* In the case of a split-dollar demand loan, the amount of interest deemed transferred and retransferred for purposes of paragraph (h)(1) of this section is equal to the aggregate of—

(i) For each year that the split-dollar demand loan was outstanding in which the loan was a below-market split-dollar demand loan, the excess of the amount of interest payable at the stated rate over the interest actually paid allocable to that year; plus

(ii) For each year that the split-dollar demand loan was outstanding in which the loan was not a below-market split-dollar demand loan, the excess, if any, of the amount of interest payable at the appropriate rate used for purposes of imputation for that year over the interest actually paid allocable to that year.

(4) *Deferral charge.* The Commissioner may prescribe the method for determining the deferral charge treated as retransferred by the lender to the borrower under paragraph (h)(1) of this section. Until the Commissioner prescribes otherwise, the deferral charge is determined under paragraph (h)(4)(i) of this section for a split-dollar term loan subject to paragraph (h)(2) of this section and under paragraph (h)(4)(ii) of this section for a split-dollar demand loan subject to paragraph (h)(3) of this section.

(i) *Split-dollar term loan.* The deferral charge for a split-dollar term loan subject to paragraph (h)(2) of this section is determined by multiplying the hypothetical underpayment by the applicable underpayment rate, compounded daily, for the period from the date the split-dollar loan was made to the date the interest is waived, cancelled, or forgiven. The hypothetical underpayment is equal to the amount determined under paragraph (h)(2) of this section, multiplied by the highest rate of income tax applicable to the borrower (for example, the highest rate in effect under section 1 for individuals) for the taxable year in which the split-dollar term loan was made. The applicable underpayment rate is the average of the quarterly underpayment rates in effect under section 6621(a)(2) for the period from the date the split-dollar loan was made to the date the interest is waived, cancelled, or forgiven.

(ii) *Split-dollar demand loan.* The deferral charge for a split-dollar demand loan subject to paragraph (h)(3) of this section is the sum of the following amounts determined for each year the loan was outstanding (other than the year in which the waiver, cancellation, or forgiveness occurs): For each year the loan was outstanding, multiply the hypothetical underpayment for the year by the applicable underpayment rate, compounded daily, for the applicable period. The hypothetical underpayment is equal to the amount determined under paragraph (h)(3) of this section for each year, multiplied by the highest rate of income tax applicable to the borrower for that year (for example, the highest rate in effect under section 1 for individuals). The applicable underpayment rate is the average of the quarterly underpayment rates in effect under section 6621(a)(2) for the applicable period. The applicable period for a year is the period of time from the last day of that year until the date the interest is waived, cancelled, or forgiven.

(5) *Examples.* The provisions of this paragraph (h) are illustrated by the following examples:

Example 1. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on December 31, 2011, with interest of 5 percent, compounded annually. The premium payment is a split-dollar term loan. Assume the short-term AFR (based on annual compounding) at the time the loan was made was 5 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2011, *Y* is repaid $100,000 but *Y* waives the remainder due on the loan ($15,762.50). Both *Y* and *B* use the calendar year as their taxable years.

(ii) When the split-dollar term loan was made, the loan was not a below-market loan under paragraph (e)(4)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 5 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1) of this section, the waived amount is treated as if, on December 31, 2011, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount deemed transferred to *Y* and retransferred to *B* equals the excess of the amount of interest payable at the stated rate ($15,762.50) over the interest actually paid ($0), or $15,762.50. In addition, the amount deemed retransferred to *B* is increased by the deferral charge determined under paragraph (h)(4) of this section. Because of the employment relationship between *Y* and *B*, the total retransferred amount is treated as compensation paid by *Y* to *B*.

Example 2. (i) On January 1, 2009, Employer *Y* and Employee *B* entered into a split-dollar life insurance arrangement under which *B* is named as the policy owner. On January 1, 2009, *Y* made a $100,000 premium payment, repayable on the demand of *Y*, with interest of 7 percent, compounded annually. The premium payment is a split-dollar demand loan. Assume the blended annual rate (based on annual compounding) in 2009 was 5 percent and in 2010 was 6 percent. Repayment of both the premium payment and the interest due thereon was fully recourse to *B*. On December 31, 2010, *Y* demands repayment and is repaid its $100,000 premium payment in full; however, *Y* waives all interest due on the loan. Both *Y* and *B* use the calendar year as their taxable years.

(ii) For each year that the split-dollar demand loan was outstanding, the loan was not a below-market loan under paragraph (e)(3)(ii) of this section. Under paragraph (f) of this section, *Y* was required to accrue compound interest of 7 percent each year the loan remained outstanding. *B*, however, was not entitled to any deduction for this interest under paragraph (c) of this section.

(iii) Under paragraph (h)(1) of this section, a portion of the waived interest is treated as if, on December 31, 2010, it had in fact been paid to *Y* and was then retransferred by *Y* to *B*. The amount of interest deemed transferred to *Y* and retransferred to *B* equals the excess, if any, of the amount of interest payable at the blended annual rate for each year the loan is outstanding over the interest actually paid with respect to that year. For 2009, the interest payable at the blended annual rate is $5,000 ($100,000 x 0.05). For 2010, the interest payable at the blended annual rate is $6,000 ($100,000 x 0.06). Therefore, the amount of interest deemed transferred to *Y* and retransferred to *B* equals $11,000. In addition, the amount deemed retransferred to *B* is increased by the deferral charge determined under paragraph (h)(4) of this section. Because of the employment relationship between *Y* and *B*, the total retransferred amount is treated as compensation paid by *Y* to *B*.

(i) [Reserved]

(j) *Split-dollar loans that provide for contingent payments*—(1) *In general*. Except as provided in paragraph (j)(2) of this section, this paragraph (j) provides rules for a split-dollar loan that provides for one or more contingent payments. This paragraph (j), rather than § 1.1275–4, applies to split-dollar loans that provide for one or more contingent payments.

(2) *Exceptions*—(i) *Certain contingencies*. For purposes of this section, a split-dollar loan does not provide for contingent payments merely because—

(A) The loan provides for options described in paragraph (e)(4)(iii)(B) of this section (for example, certain call options, put options, and options to extend); or

(B) The loan is described in paragraph (e)(5) of this section (relating to certain split-dollar term loans, such as a split-dollar term loan payable not later than the death of an individual).

(ii) *Insolvency and default*. For purposes of this section, a payment is not contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances. However, if any payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of this paragraph (j) unless the parties to the arrangement make the written representation provided for in paragraph (d)(2) of this section.

(iii) *Remote and incidental contingencies*. For purposes of this section, a payment is not a contingent payment merely because of a contingency that, as of the date the split-dollar loan is made, is either remote or incidental (within the meaning of § 1.1275–2(h)).

(iv) *Exceptions for certain split-dollar loans*. This paragraph (j) does not apply to a split-dollar loan described in § 1.1272–1(d) (certain debt instruments that provide for a fixed yield) or a split-dollar loan described in paragraph (g) of this section (relating to split-dollar loans providing for certain variable rates of interest).

(3) *Contingent split-dollar method*—(i) *In general*. If a split-dollar loan provides for one or more contingent payments, then the parties account for the loan under the contingent split-dollar method. In general, except as provided in this paragraph (j), this method is the same as the noncontingent bond method described in § 1.1275–4(b).

(ii) *Projected payment schedule*—(A) *Determination of schedule*. No comparable yield is required to be determined. The projected payment schedule for the loan includes all noncontingent payments and a projected payment for each contingent payment. The projected payment for a contingent payment is the lowest possible value of the payment. The projected payment schedule, however, must produce a yield that is not less than zero. If the projected payment schedule produces a negative yield, the schedule must be reasonably adjusted to produce a yield of zero.

(B) *Split-dollar term loans payable upon the death of an individual*. If a split-dollar term loan described in paragraph (e)(5)(ii)(A) or (v)(A)(*1*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(ii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(C) *Certain split-dollar term loans conditioned on the future performance of substantial services by an individual*. If a split-dollar term loan described in paragraph (e)(5)(iii)(A)(*1*) or (v)(A)(*2*) of this section provides for one or more contingent payments, the projected payment schedule is determined based on the term of the loan as determined under paragraph (e)(5)(iii)(C) or (v)(B)(*2*) of this section, whichever is applicable.

(D) *Demand loans*. If a split-dollar demand loan provides for one or more contingent payments, the projected payment schedule is determined based on a reasonable assumption as to when the lender will demand repayment.

(E) *Borrower/lender consistency*. Contrary to § 1.1275–4(b)(4)(iv), the lender rather than the borrower is required to determine the projected payment schedule and to provide the schedule to the borrower and to any indirect participant as described in paragraph (e)(2) of this section. The lender's projected payment schedule is used by the lender, the borrower, and any indirect participant to compute interest accruals and adjustments.

(iii) *Negative adjustments*. If the issuer of a split-dollar loan is not allowed to deduct interest or OID (for example, because of section 163(h) or 264), then the issuer is not required to include in income any negative adjustment carryforward determined under § 1.1275–4(b)(6)(iii)(C) on the loan, except to the extent that at maturity the total payments made over the life of the loan are less than the issue price of the loan.

(4) *Application of section 7872*—(i) *Determination of below-market status*. The yield based on the projected payment schedule determined under paragraph (j)(3) of this section is used to determine whether the loan is a below-market split-dollar loan under paragraph (e) of this section.

(ii) *Adjustment upon the resolution of a contingent payment*. To the extent that interest has accrued under section 7872 on a split-dollar loan and the interest would not have accrued under this paragraph (j) in the absence of section 7872, the lender is not required to recognize income under § 1.1275–4(b) for a positive adjustment and the borrower is not treated as having interest expense for a positive adjustment. To the same extent, there is a reversal of the tax consequences imposed under paragraph (e) of this section for the prior imputed transfer from the lender to the borrower. This reversal is taken into account in determining adjusted gross income.

(5) *Examples*. The following examples illustrate the rules of this paragraph (j). For purposes of this paragraph (j)(5), assume that the contingent payments are neither remote nor incidental. The examples are as follows:

Example 1. (i) On January 1, 2010, Employer *T* and Employee *G* enter into a split-dollar life insurance arrangement under which *G* is named as the policy owner. On January 1, 2010, *T* makes a $100,000 premium payment. On December 31, 2013, *T* will be repaid an amount equal to the premium payment plus an amount based on the increase, if any, in the price of a specified commodity for the period the loan is outstanding. The premium payment is a split-dollar term loan. Repayment of both the premium payment and the interest due thereon is recourse to *G*. Assume that the appropriate AFR for this loan, based on annual compounding, is 7 percent. Both *T* and *G* use the calendar year as their taxable years.

(ii) Under this paragraph (j), the split-dollar term loan between *T* and *G* provides for a contingent payment. Therefore, the loan is subject to the contingent split-dollar method. Under this method, the projected payment schedule for the loan provides for a noncontingent payment of $100,000 and a projected payment of $0 for the contingent payment (because it is the lowest possible value of the payment) on December 31, 2013.

(iii) Based on the projected payment schedule and a discount rate of 7 percent, compounded annually (the appropriate AFR), the present value of the payments under the loan is $76,289.52. Under paragraphs (e)(4) and (j)(4)(i) of this section, the loan does not provide for sufficient interest because the loan's imputed loan amount of $76,289.52 (the present value of the payments) is less than the amount loaned of $100,000. Therefore, the loan is a below-market split-dollar term loan and the loan is recharacterized as consisting of two portions: an imputed loan amount of $76,289.52 and an imputed transfer of $23,710.48 (amount loaned of $100,000 minus the imputed loan amount of $76,289.52).

(iv) In accordance with section 7872(b)(1) and paragraph (e)(4)(iv) of this section, on the

date the loan is made, *T* is treated as transferring to *G* $23,710.48 (the imputed transfer) as compensation. In addition, *T* must take into account as OID an amount equal to the imputed transfer. See § 1.1272–1 for the treatment of OID.

Example 2. (i) Assume, in addition to the facts in *Example 1*, that on December 31, 2013, *T* receives $115,000 (its premium payment of $100,000 plus $15,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $15,000 positive adjustment ($15,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, *T* must include in income, and *G* is entitled to deduct, $15,000 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* takes the reversal into account in determining adjusted gross income. That is, the $15,000 is an ''above-the-line'' deduction, whether or not *G* itemizes deductions.

Example 3. (i) Assume the same facts as in *Example 2*, except that on December 31, 2013, *T* receives $127,000 (its premium payment of $100,000 plus $27,000).

(ii) Under the contingent split-dollar method, when the loan is repaid, there is a $27,000 positive adjustment ($27,000 actual payment minus $0 projected payment). Under paragraph (j)(4) of this section, because *T* accrued imputed interest of $23,710.48 under section 7872 on this split-dollar loan to *G* and this interest would not have accrued in the absence of section 7872, *T* is not required to include $23,710.48 of the positive adjustment in income, and *G* is not treated as having interest expense for the positive adjustment. To the same extent, in 2013, *T* must include in income, and *G* is entitled to deduct, $23,710.48 to reverse their respective prior tax consequences imposed under paragraph (e) of this section (*T*'s prior deduction for imputed compensation deemed paid to *G* and *G*'s prior inclusion of this amount). *G* and *T* take these reversals into account in determining adjusted gross income. Under the contingent split-dollar method, *T* must include in income $3,289.52 upon resolution of the contingency ($27,000 positive adjustment minus $23,710.48).

(k) *Payment ordering rule.* For purposes of this section, a payment made by the borrower to or for the benefit of the lender pursuant to a split-dollar life insurance arrangement is applied to all direct and indirect split-dollar loans in the following order—

(1) A payment of interest to the extent of accrued but unpaid interest (including any OID) on all outstanding split-dollar loans in the order the interest accrued;

(2) A payment of principal on the outstanding split-dollar loans in the order in which the loans were made;

(3) A payment of amounts previously paid by a non-owner pursuant to a split-dollar life insurance arrangement that were not reasonably expected to be repaid by the owner; and

(4) Any other payment with respect to a split-dollar life insurance arrangement, other than a payment taken into account under paragraphs (k)(1), (2), and (3) of this section.

(l) [Reserved]

(m) *Repayments received by a lender.* Any amount received by a lender under a life insurance contract that is part of a split-dollar life insurance arrangement is treated as though the amount had been paid to the borrower and then paid by the borrower to the lender. Any amount treated as received by the borrower under this paragraph (m) is subject to other provisions of the Internal Revenue Code as applicable (for example, sections 72 and 101(a)). The lender must take the amount into account as a payment received with respect to a split-dollar loan, in accordance with paragraph (k) of this section. No amount received by a lender with respect to a split-dollar loan is treated as an amount received by reason of the death of the insured.

(n) *Effective date*—(1) *General rule.* This section applies to any split-dollar life insurance arrangement entered into after September 17, 2003. For purposes of this section, an arrangement is entered into as determined under § 1.61–22(j)(1)(ii).

(2) *Modified arrangements treated as new arrangements.* If an arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of § 1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 10.** The authority citation for part 31 continues to read in part as follows:

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

■ **Par. 11.** In § 31.3121(a)-1, paragraph (k) is added to read as follows:

§ 31.3121(a)–1 Wages.

* * * * *

(k) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3121(v), *see* §§ 1.61–22 and 1.7872–15 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

■ **Par. 12.** In § 31.3231(e)–1, paragraph (a)(6) is added to read as follows:

§ 31.3231(e)–1 Compensation.

(a) * * *

(6) *Split-dollar life insurance arrangements. See* §§ 1.61–22 and 1.7872–15 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

* * * * *

■ **Par. 13.** In § 31.3306(b)–1, paragraph (l) is added to read as follows:

§ 31.3306(b)–-1 Wages.

* * * * *

(l) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3306(r), *see* §§ 1.61–22 and 1.7872–15 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

■ **Par. 14.** In § 31.3401(a)–1, paragraph (b)(15) is added to read as follows:

§ 31.3401(a)–1 Wages.

* * * * *

(b) * * *

(15) *Split-dollar life insurance arrangements. See* § 1.61–22 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 15.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 16.** In section 602.101, paragraph (b) is amended by adding an entry in numerical order for § 1.7872–15 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.7872–15	1545–1792
* * * * *	

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: September 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–23596 Filed 9–11–03; 4:13 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 106–200336(a); FRL–7558–9]

Approval and Promulgation of Implementation Plans North Carolina: Miscellaneous Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of North Carolina on April 4, 2003, for the purpose of establishing revisions to Volatile Organic Compounds and other miscellaneous revisions.

DATES: This direct final rule is effective November 17, 2003, without further notice, unless EPA receives adverse comment by October 17, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections I.B.1.i. through iii. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. De La Torre Colón can also be reached via electronic mail at delatorre.rosymar@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under NC–106. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, North Carolina Department of Environmental and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking NC–106'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *delatorre.rosymar@epa.gov*, please including the text ''Public comment on proposed rulemaking NC–106'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for

submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking NC–106'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Rosymar De La Torre Colón; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On April 4, 2003, the North Carolina Department of Environmental and Natural Resources submitted revisions to the North Carolina SIP. This submittal includes revisions to the Volatile Organic Compound chapter and other miscellaneous revisions. A detailed analysis of the major revisions are listed below.

III. Analysis of North Carolina's State Submittal, Subchapter 2D—Air Pollution Control Requirements

Section .0100 Definitions and References

.0105 Mailing List

This rule was recodified to reference paragraph (d) and provides the new mailing address.

Section .0500 Emission Control Standards

.0507 Particulates From Chemical Fertilizer Manufacturing Plants

This rule provides the definition for discharge from stacks or chimneys.

.0509 Particulates From Mica or Feldspar Processing Plants

This rule is being revised to clarify that ''E'' is equal to the maximum allowable emission rate for particulate matter in pounds per hour and ''P'' equals the process weight in tons per hour.

.0515 Particulates From Miscellaneous Industrial Processes

This rule changes industrial processing rates from 60,000 pounds per hour to 30 tons per hour.

.0516 Sulfur Dioxide Emissions From Combustion Sources

This rule is proposed to exclude 15A NCAC 2D .1205, .1206, and .1210 from the Rule. These three incinerator rules must meet MACT standards for sulfur dioxide.

Section .0900 Volatile Organic Compounds

.0912 General Provisions on Test Methods and Procedures

This rule is being revised to correct the name Division of Air Quality Environmental Management to Division of Air Quality.

.0927 Bulk Gasoline Terminals

This rule defines degassing, liquid balancing, and liquid displacement in terms of cleaning, inspection and repair. The owner of such gas terminals shall also have copies on file of certification test. Bulk gasoline storage tanks less than 138 gallons of liquid gas are exempt from degassing requirements if vented in less than 24 hours.

.0932 Gasoline Truck Tanks and Vapor Collection Systems

This rule defines certified facility and its use.

.0952 Petition for Alternative Controls For RACT

This rule edits the owner or operator requirements.

.0954 Stage II Vapor Recovery

This rule revises the name, North Carolina Department of Environment and Natural Resources from North Carolina Department of Environment, Health, Environment and Natural Resources.

.0959 Petition for Superior Alternative Controls

This rule applies to all owners and operators of any volatile organic compound source. By proving that alternative operational or equipment controls can further reduce emissions superior to the required controls, these

owners and operators may petition for the use of the alternative control. Particular petition requirements are provided.

IV. Final Action

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 17, 2003, without further notice unless the Agency receives adverse comments by October 17, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 17, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. In § 52.1770(c), table 1 is amended under subchapter 2D by revising entries for: .0105, .0507, .0509, .0515, .0516, .0521, .0912, .0927, .0932, .0952, .0954, and .0959 to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Subchapter 2D—Air Pollution Control Requirements			
	Section .0100—Definitions and References			
*	* * *	*	*	*
Section .0105	Mailing List	7/01/02	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
	Section .0500—Emission Control Standards			
*	* * *	*	*	*
Section 0507	Particulates From Chemical Fertilizer Manufacturing Plants.	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0509	Particulates From Mica or Feldspar Processing Plants	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0515	Particulates From Miscellaneous Industrial Processes	4/01/03	9/17/03 [Insert citation of publication]	
Section .0516	Sulfur Dioxide Emissions From Combustion Sources	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
	Section .0900—Volatile Organic Compounds			
*	* * *	*	*	*
Section .0912	General Provisions on Test Methods and Procedures	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0927	Bulk Gasoline Terminals	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0932	Gasoline Truck Tanks and Vapor Collection Systems	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0952	Petition for Alternative Controls *For RACT*	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0954	Stage II Vapor Recovery	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*
Section .0959	Petition for Alternative Controls	4/01/03	9/17/03 [Insert citation of publication]	
*	* * *	*	*	*

* * * * *

[FR Doc. 03–23580 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 195–1195a; FRL–7559–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing approval of revisions to the Missouri State Implementation Plan (SIP) and Operating Permit Program. The changes, which include revisions to definitions, permit modification procedures, and reporting requirements, were made to correct the operating permit program deficiencies listed in the Notice of Deficiency (NOD) published by EPA in the **Federal Register** on March 25, 2002. These revisions are necessary to ensure consistency between the state and federally approved rules. This rule finds that Missouri has cured all deficiencies noticed on March 25, 2002, and permanently suspends any resulting consequences, including sanctions, with respect to those specific deficiencies.

DATES: This direct final rule will be effective November 17, 2003, unless EPA receives adverse comments by October 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *jones.harriett@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Harriett Jones at (913) 551–7730, or by e-mail at *jones.harriett@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the Part 70 Operating Permits Program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and Part 70 program revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the federally-approved SIP is primarily a state responsibility. However, after the regulation is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve compliance by issuing each source a single permit that consolidates all of the applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that

emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Missouri has requested that we approve as a revision to the Missouri SIP and part 70 Operating Permits Program recently adopted revisions to rule 10 CSR 10–6.065. These revisions were adopted to cure the deficiencies discussed in a March 25, 2002, **Federal Register** (67 FR 13626), in which we notified Missouri of deficiencies which we had identified in its Part 70 program. Missouri also made other changes to its program to clarify its terms. These changes were approved by the Missouri Air Conservation Commission on December 5, 2002, and became effective on April 30, 2003. An overview of the revisions is discussed below.

(1) Definition of Major Source. For the purpose of determining Part 70 applicability, the definition of major source at 40 CFR 70.2 includes specific emission thresholds for sources in ozone transport regions, carbon monoxide non-attainment areas, and particulate matter (PM_{10}) non-attainment areas. Missouri currently does not have any of these areas within the state. However, Missouri's regulations, which did not previously include these specific portions of the definition of major source, have been revised to include them in 10 CSR 10–6.065(1)(D)3, which defines the term ''Part 70 installation.'' Because the term is also used in Missouri's SIP rules, in particular 10 CSR 10–6.065(5), relating to intermediate (non-major) permits, the revision of the term is a revision to the SIP.

(2) Revisions to Acid Rain Portion of Permit. The Title V permit revision procedures specified at 40 CFR 70.7(e) require that any change to the acid rain portion of the permit must be made in accordance with the acid rain permit revision procedures specified in 40 CFR part 72 which were promulgated under Title IV of the Act. Missouri's regulations, which did not previously include this requirement, have been revised to include it in 10 CSR 10–6.065(6)(E)5.A.

(3) Contemporaneous notice required for ''off-permit'' changes. The Title V permit regulations specified at 40 CFR 70.4(b)(14) require that a state may allow ''off-permit'' changes (*i.e.*, changes that are not addressed or prohibited by the permit) provided that ''contemporaneous'' written notice of each such change is provided to EPA and the permitting authority. Missouri's regulations at 10 CSR 10–6.065(6)(C)9.B., which previously allowed these notices to be submitted no later than the next annual emissions report, have been revised to state that they must be submitted contemporaneously with the change.

(4) Minor permit modification procedures. The Title V permit modification procedures specified at 40 CFR 70.7(e)(2)(ii)(C) require that applications for minor permit modifications include certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used. Missouri's regulations at 10 CSR 10–6.065(6)(E)5.B.(II)(a)III which did not previously include this requirement, have been revised to include it.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The submittal also meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action Is EPA Taking?

We are approving the Missouri submission as a revision to the Title V program, and to the extent that the definition of major source is revised, as a SIP revision. We are also finding that Missouri has corrected the deficiencies identified in the March 25, 2002, notice. Finally, we are determining that Missouri is no longer subject to sanctions for the deficiencies stated in the notice, and that our obligation to promulgate a Federal permit program has terminated. We are processing this action as a direct final rule because the revisions merely correct the state regulations to be consistent with the requirements of Federal law. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 195–1195a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to Harriett Jones at *jones.harriett@epa.gov.* Please include identification number MO 195–1195a in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. Regulations.gov. Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. By Mail. Written comments should be sent to the name and address listed

in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 4, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.065'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.065	Operating Permits	4/30/03	September 12, 2003, FR page citation.	The state rule has sections (4)(A), (4)(B), and (4)(H)—Basic State Operating Permits. EPA has not approved those sections. Section (6), Part 70 Operating Permits, has been approved as an integral part of the operating permit program and has not been approved as part of the SIP. The ''intermediate source'' program in Section (5) is approved, along with other provisions of 10–6.065 on which it relies.
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 1. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 2. Appendix A to Part 70 is amended by adding paragraph (n) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(n) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.065, ''Operating Permits,'' on May 6, 2003, approval effective November 17, 2003.

* * * * *

[FR Doc. 03–23586 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[No. R803CISWI; FRL–7560–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Control of Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the commercial and industrial solid waste incinerator 111(d)/129 plan (the ''plan'') submitted by North Dakota's Department of Health on May 1, 2003. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999. This action also approves negative declarations submitted by Colorado's Department of Public Health and Environment on May 6, 2002; Montana's Department of Environmental Quality on January 28, 2002; South Dakota's Department of Environment and Natural Resources on February 28, 2002; Utah's Department of Environmental Quality on April 23, 2002; Wyoming's Department of Environmental Quality on December 16, 2002.

DATES: This direct final rule is effective on November 17, 2003, without further notice, unless EPA receives adverse written comments by October 17, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 303–312–6526, *paser.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under R803CISWI. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday,

8 a.m. to 4 p.m., excluding federal Holidays.

2. *Copies of the States' submittals are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the documents relevant to each respective State action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530; Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620; North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506; South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501; Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114; and Wyoming Department of Environmental Quality, Air Quality Division, 122 W. 25th Street, Cheyenne, WY 82002.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking No. R803CISWI'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments to *long.richard@epa.gov* and *paser.kathleen@epa.gov* and include in the text ''Public comment on proposed rulemaking No. R803CISWI'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Please include the text ''Public comment on proposed rulemaking No. R803CISWI'' in the subject line on the first page of your comment

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the For Further Information Contact section.

II. What Action Is Being Taken by EPA Today?

We are approving North Dakota's State Plan, as submitted on May 1, 2003 for the control of air emissions from CISWIs, except for those CISWIs located

in Indian Country. When we developed our New Source Performance Standard (NSPS) for CISWIs, we also developed Emissions Guidelines (EG) to control air emissions from older CISWIs as we were required to do by Section 129(a) of the CAA (42 U.S.C. Section 7429(a)). (See 65 FR 75337–75376, December 1, 2000). North Dakota developed a State Plan, as required by section 111(d) of the CAA (42 U.S.C. Section 7411(d)), to adopt the EG into their body of regulations, and we are acting today to approve the state plan as meeting all requirements of section 111(d) and 129 of the CAA and EPA regulations governing the adoption and approval of state plans for designated facilities (40 CFR part 60, subpart B). We are also approving negative declarations submitted by Colorado's Department of Public Health and Environment on May 6, 2002; Montana's Department of Environmental Quality on January 28, 2002; South Dakota's Department of Environment and Natural Resources on February 28, 2002; Utah's Department of Environmental Quality on April 23, 2002; Wyoming's Department of Environmental Quality on December 16, 2002. The EPA does not require States to develop plans or regulations to control emissions from sources for which there are none present in the State (40 CFR 62.06).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective November 17, 2003, unless by October 17, 2003, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective November 17, 2003.

III. Why Do We Need To Regulate CISWI Emissions?

When burned, commercial and industrial solid waste emit various air pollutants, including organics (dioxins/furans), carbon monoxide, metals (lead, cadmium, and mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). Mercury is highly toxic and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through the ingestion of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What Is a State Plan?

Section 111(d) of the Act requires that pollutants, other than criteria pollutants, controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated for a non-criteria pollutant, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to implement and enforce it.

V. What Does the North Dakota State Plan Contain?

North Dakota adopted the Federal NSPS and EG by reference into its State regulations at NDAC 33–15–12–02. The North Dakota State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. Incorporation by reference of the model rule (40 CFR 60.2575 through 60.2875) including tables 1 through 5 into NDAC 33–15–12 as the mechanism for implementing the emission guidelines. Section 23–25–10 of the North Dakota Century Code gives the North Dakota Department of Health the authority to enforce any properly adopted rule.
3. An inventory of approximately 9 known designated facilities in operation, along with estimates of their toxic air emissions and 11 known designated facilities that are shut down yet still capable of operating. The North Dakota Department of Health anticipates that nearly all of the active CISWIs will shut down rather than attempt to comply with this plan. The air curtain incinerator units operated by the City of Fargo and Markwed Excavating, and perhaps a few more units, will remain operational. Any units currently shut down are expected to remain shut down.
4. Emission limits that are as protective as the EG;
5. A compliance date of 3 years after Environmental Protection Agency approval of the state plan but not later than December 1, 2005.
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing; and,
8. Provisions for progress reports to EPA.

The North Dakota State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.2500 through 60.2875, *Subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.*

VI. Is My CISWI Subject to These Regulations?

The EG for existing CISWIs affect any CISWI built on or before November 30, 1999. CISWI unit means any combustion device that combusts commercial and industrial waste as

defined at 40 CFR 60.2875. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.2555 (a)–(o), you are subject to these regulations.

VII. What Steps Do I Need To Take?

You must meet the requirements listed in NDAC 33–15–12–02 Subpart DDDD, summarized as follows:

A. *Increments of Progress:* If you plan to achieve compliance more than one year following the effective date of the State Plan approval, you must submit a final control plan by one year after EPA approval of the state plan or December 1, 2004, whichever comes first; and you must achieve final compliance by three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

B. *Waste Management Plan:* You must submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. This written plan must be submitted no later than one year after EPA approval of the state plan or December 1, 2004, whichever comes first.

C. *Operator Training and Qualification:* Your CISWI unit can only be operated when a fully trained and qualified CISWI operator is accessible. Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in 40 CFR 60.2635(c). The operator training course must be completed by the later of the three follow dates: Three years after EPA approval of the state plan or December 1, 2005, whichever comes first; six months after CISWI unit startup; or six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

D. *Emission Limitations and Operating Limits:* You must meet the emission limitations specified in Table 2 of 40 CFR part 60, subpart DDDD, as adopted by the North Dakota Department of Health, on the date the initial performance test is required or completed (whichever is earlier). In addition, you must meet the operating limits specified in 40 CFR 60.2675, on the date the initial performance test is required or completed (whichever is earlier).

E. *Performance Testing and Initial Compliance Requirements:* You must conduct an initial performance test as required under 40 CFR 60.8, to determine compliance with the emission limitations and to establish operating limits using the procedure in 40 CFR 60.2675 or 40 CFR 60.2680. The initial performance date must be conducted no later than 180 days after your final compliance date. Specifically, no later than three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

F. *Continuous Compliance Requirements:* You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under § 60.8 to determine compliance with the emission limitations. You must continuously monitor the operating parameters specified in § 60.2675 or established under § 60.2680. You must only burn the same types of waste used to establish operating limits during the performance test.

G. *Monitoring:* You must install monitoring equipment as specified in § 60.2730. Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities, you must obtain all monitoring data at all times the CISWI unit is operating.

H. *Recordkeeping and Reporting:* You must maintain the thirteen items (as applicable) as specified in § 60.2740(a)–(m) for a period of at least five years. All records must be available onsite in either paper copy or computer-readable format that can be printed upon request. See Table 5 of 40 CFR part 60, subpart DDDD, as adopted by the North Dakota Department of Health, for summary of the reporting requirements.

I. *Title V Operating Permits:* Each CISWI unit must operate pursuant to a permit issued under section 129(e) and title V of the CAA by December 1, 2003, or the effective date of the title V permit program to which your unit is subject if your unit is subject to title V as a result of some triggering requirement(s) other than this plan (whichever is earlier). For example, your unit may trigger title V permitting requirements by virtue of being a major source and be required to obtain a title V permit prior to the December 1, 2003 deadline.

J. *Air Curtain Incinerators:* Air curtain incinerators that burn only 100 percent wood waste, 100 percent clean lumber, or 100 percent of a mixture of only wood waste, clean lumber, and/or yard waste are only required to meet the requirements of §§ 60.2245 through 60.2260.

VIII. What Is a Negative Declaration?

Provisions of sections 111(d) and 129 of the CAA require States to either develop plans to control emissions from CISWIs or to report that there are no facilities in the State as described in the federal rule. EPA does not require States to develop plans or regulations to control emissions from sources for which there are none present in the State (40 CFR 62.06). If it is thought that this might be the case, the State carefully examines its emissions inventory and operating permits before initiating the planning and regulation development process. If a careful examination of the emissions inventory finds no source for a particular source category, then the State prepares and submits to EPA a negative declaration stating there are no sources in the State for that source category. This is done in lieu of submitting a control strategy.

IX. EPA Review of Colorado's, Montana's, South Dakota's, Utah's and Wyoming's Negative Declarations

A. *Colorado:* On May 6, 2002, the State of Colorado submitted to EPA a negative declaration regarding the need for a regulation covering CISWIs. The Colorado Department of Public Health and Environment evaluated the applicability criteria in the final emission guidelines (40 CFR part 60, subpart DDDD) and conducted a review of facilities in Colorado in conjunction with the Hazardous Material and Waste Management Division, Solid Waste Unit. EPA examined the State's negative declaration and agrees there are no unregulated CISWIs in Colorado which would require the adoption of rules to control this source category.

B. *Montana:* On January 28, 2002, the State of Montana submitted to EPA a negative declaration regarding the need for a regulation covering CISWIs. The Montana Department of Environmental Quality evaluated the applicability criteria in the final emission guidelines (40 CFR part 60, subpart DDDD) and reviewed their inventory of sources in the State. EPA examined the State's negative declaration and agrees there are no unregulated CISWIs in Montana which would require the adoption of rules to control this source category.

C. *South Dakota:* On February 28, 2002, the State of South Dakota submitted to EPA a negative declaration regarding the need for a regulation covering CISWIs. The South Dakota Department of Environment and Natural Resources evaluated the applicability criteria in the final emission guidelines (40 CFR part 60, subpart DDDD) and reviewed their inventory of sources located in the State. EPA examined the State's negative declaration and agrees there are no unregulated CISWIs in South Dakota which would require the

adoption of rules to control this source category.

D. *Utah:* On April 23, 2002, the State of Utah submitted to EPA a negative declaration regarding the need for a regulation covering CISWIs. The Utah Department of Environmental Quality (DEQ) evaluated the applicability criteria in the final emission guidelines (40 CFR part 60, subpart DDDD), searched existing source permitting files, and conducted a review of facilities in Utah in conjunction with the Division of Solid and Hazardous Waste. In addition, the DEQ examined the landfill sources in Utah and found that none are operating CISWI units. EPA examined the State's negative declaration and agrees there are no unregulated CISWIs in Utah which would require the adoption of rules to control this source category.

E. *Wyoming:* On December 16, 2002, the State of Wyoming submitted to EPA a negative declaration regarding the need for a regulation covering CISWIs. The Wyoming Department of Environmental Quality evaluated the applicability criteria in the final emission guidelines (40 CFR part 60, subpart DDDD) and reviewed their inventory of sources located in the State. EPA examined the State's negative declaration and agrees there are no unregulated CISWIs in Wyoming which would require the adoption of rules to control this source category.

If a new source chooses to locate in Colorado, Montana, North Dakota, South Dakota, Utah, or Wyoming, it would be required to comply with the New Source Performance Standard (NSPS) published for CISWIs on December 1, 2000 (65 FR 75338). If, at a later date, an existing CISWI unit is identified in a State for which a negative declaration has been made, a Federal Implementation Plan implementing the emission guidelines contained in subpart DDDD will automatically apply to that CISWI unit until a State plan is approved.

X. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671.

Subpart G—Colorado

■ 2. Add a new undesignated center heading and § 62.1380 to subpart G to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.1380 Identification of Plan—Negative Declaration.

Letter from the Department of Public Health and Environment submitted May 6, 2002 certifying that there are no existing commercial and industrial solid waste incinerators in the State of Colorado that are subject to part 60, subpart DDDD, of this chapter.

Subpart BB—Montana

■ 3. Add a new undesignated center heading and § 62.6630 to subpart BB to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.6630 Identification of Plan—Negative Declaration.

Letter from the Department of Environmental Quality submitted January 28, 2002 certifying that there are no existing commercial and industrial solid waste incinerators in the State of Montana that are subject to part 60, subpart DDDD, of this chapter.

Subpart JJ—North Dakota.

■ 4. Add a new undesignated center heading and § 62.8630, 62.8631, and 62.8632 to subpart JJ to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.8630 Identification of Plan.

Section 111(d)/129 Plan for Commercial and Industrial Solid Waste Incinerators and the associated State regulation in section 33–15–12–02 of the North Dakota Administrative Code submitted by the State on May 1, 2003.

§ 62.8631 Identification of Sources.

The plan applies to all existing commercial and industrial solid waste incinerators for which construction was commenced on or before November 30, 1999, as described in 40 CFR part 60, subpart DDDD.

§ 62.8632 Effective Date.

The effective date of the plan applicable to existing commercial and industrial solid waste incinerators is November 17, 2003.

Subpart QQ—South Dakota

■ 5. Add a new undesignated center heading and § 62.10380 to subpart QQ to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.10380 Identification of Plan—Negative Declaration.

Letter from the Department of Environment and Natural Resources submitted February 28, 2002 certifying that there are no existing commercial and industrial solid waste incinerators in the State of South Dakota that are subject to part 60, subpart DDDD, of this chapter.

Subpart TT—Utah

■ 6. Add a new undesignated center heading and § 62.11140 to subpart TT to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.11140 Identification of Plan—Negative Declaration.

Letter from the Department of Environmental Quality submitted April 23, 2002 certifying that there are no existing commercial and industrial solid waste incinerators in the State of Utah that are subject to part 60, subpart DDDD, of this chapter.

Subpart ZZ—Wyoming

7. Add a new undesignated center heading and § 62.12630 to subpart ZZ to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerators

§ 62.12630 Identification of Plan—Negative Declaration

Letter from the Department of Environmental Quality submitted December 16, 2002 certifying that there are no existing commercial and industrial solid waste incinerators in the State of Wyoming that are subject to part 60, subpart DDDD, of this chapter.

[FR Doc. 03–23749 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[No. R803NDT5REV; FRL–7560–5]

Clean Air Act Approval of Revisions To the Operating Permits Program in North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, as a revision to North Dakota's title V air operating permits program, a proposed amendment to North Dakota's definition of ''major source'' in response to recent amendments to the definition of ''major source'' in the operating permit regulations.

DATES: This direct final rule is effective on November 17, 2003, without further notice, unless EPA receives adverse written comments by October 17, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 303–312–6526, *paser.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under R803NDT5REV. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. You may view the public rulemaking file at the

Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding federal Holidays.

2. *Copies of the State's submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the documents relevant to this action are available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking No. R803NDT5REV'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments to *long.richard@epa.gov* and *paser.kathleen@epa.gov* and include in the text ''Public comment on proposed rulemaking No. R803NDT5REV'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Please include the text ''Public comment on proposed rulemaking No. R803CISWI'' in the subject line on the first page of your comment

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the For Further Information Contact section.

II. Background

North Dakota has proposed to revise the definition of ''major source'' in response to recent amendments to the definition of ''major source'' in part 70. See 66 FR 59161 (November 27, 2001). EPA made two changes from the 1992 rule regarding when non-Hazardous Air Pollutant (HAP) fugitive emissions are included in determining major source status. The 1992 rule required that non-HAP fugitive emissions be counted for all industrial facilities in source categories covered by New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) standards, but only with regard to pollutants specifically regulated for the source category. The final amendment to part 70 changed this requirement: (1) To address only source categories covered by NSPS or NESHAP standards promulgated after August 7, 1980; and

(2) to delete the limitation that only pollutants specifically regulated by the standard be included. Consistent with this amendment, North Dakota is proposing to revise its rule to correspond with the part 70 definition of ''major source.'' In doing so, North Dakota's rules are as stringent as part 70. Therefore, North Dakota's proposed change in the definition of ''major source'' is approvable.

III. Final Action

EPA is approving, as a revision to North Dakota's title V air operating permits program, NDAC 33–15–14–06, the proposed amendment to the definition of ''major source.'' Consistent with EPA's action granting North Dakota's full approval, this approval extends to all areas within the State except the following: Any sources located in ''Indian Country'', as defined in 18 U.S.C. 1151, including the Fort Berthold, Fort Totten, Standing Rock, Sisseton and Turtle Mountain Indian Reservation, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See *e.g.*, 59 FR 55813, 55815—55818 (November 9, 1994). The term ''Indian Tribe'' is defined under the Clean Air Act (Act) as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the Act; see also 59 FR 43955, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of the **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve North Dakota's proposed amendment to their title V air operating permits program. This rule will be effective November 17, 2003 without further notice unless the Agency receives adverse comments by October 17, 2003.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 3, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. In appendix A to part 70 the entry for North Dakota is amended by adding paragraph (c) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

North Dakota

* * * * *

(c) The North Dakota Department of Health, Environmental Health Section submitted the following program revisions on May 1, 2003: NDAC 33–15–14–06.1(o)(2)(aa), effective November 17, 2003.

* * * * *

[FR Doc. 03–23751 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0286; FRL–7325–1]

Trifloxysulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of trifloxysulfuron in or on almond; almond, hulls; fruit, citrus, group 10; cotton, undelinted seed; cotton, gin byproducts; sugarcane; and tomato. Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 17, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0286, must be received on or before November 17, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0286. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 21, 2003 (68 FR 13924) (FRL–7296–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6280) by Syngenta Crop Protection, Inc., Greensboro, NC 27419. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing a tolerance for residues of the herbicide trifloxysulfuron-sodium, [*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino)carbonyl]-3-(2,2,2-trifluoroethoxy)-2-pyridinesulfonamide), in or on sugarcane at 0.01 part per million (ppm); cottonseed at 0.05 ppm; cotton byproducts at 1.0 ppm; citrus at 0.01 ppm; almond hulls at 0.01 ppm; almond nut meat at 0.01 ppm; and tomatoes at 0.01 ppm.

During the course of the review The Agency determined that based on available data and current commodity vocabulary that tolerances should be established for residues of the herbicide trifloxysulfuron *N*-[[4,6-dimethoxy-2-pyrimidinyl)amino)carbonyl]-3-2,2,2-trifluoroethoxy)-2-pyridinesulfonamide in or on the commodities almond at 0.02 ppm; almond, hulls at 0.01 ppm; fruit, citrus, group 10 at 0.03 ppm; cotton, undelinted seed at 0.05 ppm; cotton, gin

byproducts at 1.0 ppm; sugarcane at 0.01 ppm, and tomato at 0.01 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of trifloxysulfuron on almond at 0.02 ppm; almond, hulls at 0.01 ppm; fruit, citrus, group 10 at 0.03 ppm; cotton, undelinted seed at 0.05 ppm; cotton gin byproducts at 1.0 ppm; sugarcane at 0.01 ppm; and tomato at 0.01 ppm. EPAs assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by trifloxysulfuron are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents (rats)	NOAEL: 507/549 milligrams/kilogram/day (mg/kg/day) Male/Female (M/F) LOAEL: 1052/1128 mg/kg/day (M/F): M = decreased body weight, decreased body weight gain, equivocal increased testicular atrophy at end of recovery phase; F = decreased body weight, decreased body weight gain, equivocal slightly increased histopathology in liver (single cell necrosis, focal necrosis, inflammation, hepatocellular hypertrophy).
870.3100	90–Day oral toxicity rodents (mice)	NOAEL: 1,023/1,507 mg/kg/day (M/F) LOAEL: >1,023/>1,507 mg/kg/day (M/F): M = not attained; F = not attained.
870.3150	90–Day oral toxicity in nonrodents (dogs)	NOAEL: 19.8/19.6 mg/kg/day (M/F) LOAEL: 164.2/167.3 mg/kg/day (M/F): M = decreased body weight gain (20%), slight hematological effects, clinical chemistry changes suggesting hepatotoxicity, decreased thymus weight, thymic atrophy, increased glycogen in liver, hemorrhage in mesenteric lymph nodes; F = decreased body weight gain (44%), anemia with extramedullary hematopoiesis in liver/spleen and myeloidhyperplasia in bone marrow, clinical chemistry changes suggesting hepatotoxicity, decrease thymus weight, thymic atrophy and hyaline tubular change in kidney.
870.3200	21/28–Day dermal toxicity (rats)	NOAEL: 1,000/100 mg/kg/day (M/F) LOAEL: >1,000/1,000 mg/kg/day(M/F): M = not attained; F = decreased body weight gain. No dermal irritation M/F.
870.3700	Prenatal developmental in rodents (rats)	Maternal NOAEL: 300 mg/kg/day Maternal LOAEL: 1,000 mg/kg/day based on decreased food consumption during treatment, decreased body weight gain during post-treatment. Developmental NOAEL: 300 mg/kg/day Developmental LOAEL: 1,000 mg/kg/day based on slight decrease in fetal weight, increased skeletal anomalies,increased poor/absent skeletal ossification.
870.3700	Prenatal developmental in nonrodents (rabbit)	Maternal NOAEL: 100 mg/kg/day Maternal LOAEL: 250 mg/kg/day based on increased mortality, increased vaginal/anal bleeding. Developmental NOAEL: 50 mg/kg/day Developmental LOAEL: 100 mg/kg/day based on abnormally shaped heart (one fetus at 100 mg/kg/day and 3 fetuses from 2 litters at 250 mg/kg/day).

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental systemic NOAEL: 78.8/83.5 mg/kg/day (M/F) Parental systemic LOAEL: 631/676 mg/kg/day (M/F) based on decreased body weight and gain as well as decreased food consumption. Offspring systemic NOAEL: 78.8/83.5 mg/kg/day (M/F) Offspring systemic LOAEL: 631/676 mg/kg/day (M/F): decreased pup weight and weight gain, decreased spleen weight, thymus weight and increased vaginal patency. Reproductive NOAEL: 968/1,030 mg/kg/day (M/F) Reproductive LOAEL: >968/1,030 (M/F)
870.4100	Chronic toxicity rodents (rat)	See 870.4300
870.4100	Chronic toxicity dogs	NOAEL: 51.1/45.3 mg/kg/day (M/F) LOAEL: 123/121 mg/kg/day (M/F): M = gray-white foci in lungs, fibrous thickening of lung pleura, equivocal decreased body weight gain; F = equivocal increased incidence and severity of chronic urinary bladder inflammation.
870.4200	Carcinogenicity rats	See 870.4300
870.4200	Carcinogenicity mice	NOAEL: 854/112 mg/kg/day (M/F) LOAEL: >854/818 mg/kg/day (M/F): M = not determined; F = decreased body weight, body weight gain and food consumption. Negative for carcinogenicity in M and F.
870.4300	Chronic feeding/carcinogenicity rats	NOAEL: 82.6/23.7 mg/kg/day (M/F) LOAEL: 429/99.3 mg/kg/day (M/F): M = decreased body weight and gains, decreased food consumption and increased Leydig cell hyperplasia in testes; F = increased tubular atrophy in kidneys. At 500 mg/kg/day decreased body weight, body weight gain, food consumption and increased tubular atrophy in kidneys. Negative for carcinogenicity in M and F.
870.5100	Gene mutation bacterial reverse mutation assay (*S. typhimurium*/*E. coli*)	Negative without and with S-9 activation.
870.5300	*In vitro* mammalian cell forward gene mutation assay (CHO cells/HGPRT locus)	Negative without and with S-9 activation.
870.5375	*In vitro* mammalian cytogenetics assay in CHO cells	Negative without and with S-9 activation.
870.5395	Cytogenetics - mammalian erythrocyte micronucleus test in the mouse	Negative at single oral doses up to 5,000 mg/kg.
870.5500	*In vitro* unscheduled DNA synthesis (primary rat hepatocytes)	Negative response up to 250 μg/mL. Cytotoxicity at ≥15.63 μg/mL.
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL: <2,000 mg/kg/day (M/F) LOAEL: 2,000 mg/kg/day (M/F): M and F = decreased motor activity on day 1, histopathological lesions in nervous system tissues.
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL: 2,000/600 mg/kg/day (M/F) LOAEL: >2,000/2,000 mg/kg/day (M/F): M = not attained; F = decreased motor activity on day 1.
870.6200	Subchronic neurotoxicity screening battery (rat)	NOAEL: 112/553 mg/kg/day (M/F) LOAEL: 472/1,128 mg/kg/day (M/F): M = decreased body weight, body weight gain and food consumption.; F = decreased body weight.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6300	Developmental neurotoxicity (rat)	No study performed. Not Required.
870.7485	Metabolism and pharmacokinetics (rat)	Rapidly absorbed and exceted. Most (>87%) of the administered dose (AD) was excreted within 24 hours. After 7 days, very little (≤0.3% of AD) remained in the tissues. Urine was the primary route of excretion in males (50-61% of AD) and in females (70-80% of AD). Unchanged parent in males (11-20% of AD) and in females (37-47% of AD) was excreted almost entirely in the urine and only trace amounts were found in the feces. With the exception of the parent, the metabolite profile was similar between the urine and feces. The 2 primary metabolites in both urine and feces were Metabolite J (desmethyl parent, up to 26% of AD) and Metabolite K (5'hydroxy-pyrimidine of parent, up to 19% of AD). Other metabolites were Metabolites X, N, F, A and D, each up to 8.2% of the AD in males and up to 4.7% of the AD in females. Several minor metabolites were also identified as Metabolite Q, Metabolite P, guanidine, CGA-382997 and CGA-368732 (each ≤4.4% of the AD).
870.7485	Biliary metabolism (rat)	In bile duct cannulated rats, absorption was 84-88% of the Administered Dose (AD) at 48 hours. Nearly all of the AD was excreted within 48 hours. Excretion in urine ranged from 58-76%, in bile from 5-27%, and in feces was about 6% of the AD. There was no evidence for an enterohepatic circulation. Biotransformation was similar to that in the conventional rat metabolism study. The metabolite profiles in urine, bile fluid and feces were all similar.
870.7600	Dermal penetration (rat)	No study performed. Not Required.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for trifloxysulfuron used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLOXYSULFURON FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13-49)	Developmental NOAEL = 50 mg/kg/dayUF = 100 Acute RfD =0.5 mg/kg	Special FQPA SF = 1 aPAD = acute RfD/Special FQPA SF = 0.5 mg/kg	Developmental Toxicity Study in Rabbits. Developmental LOAEL = 100 mg/kg/day based on increased incidence of abnormal shaped hearts in fetuses.
Acute dietary (general population)	NOAEL = 600 mg/kg UF = 100 Acute RfD =6.0 mg/kg	Special FQPA SF = 1 aPAD = acute RfD/Special FQPA SF = 6.0 mg/kg	Acute Neurotoxicity Studies in Rats. LOAEL = 2,000 mg/kg based on decreased motor activity on day 1 and histopathological lesions in nervous system tissues of males and females.
Chronic dietary (all populations)	NOAEL= 23.7 mg/kg/day UF = 100 Chronic RfD = 0.237 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/Special FQPA SF = 0.237 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity Study in Rats. LOAEL = 99.3 mg/kg/day based on increased tubular atrophy in the kidneys of females (developing after 12 months).
Incidental oral short-term (1 - 30 days)	Offspring NOAEL = 78.8/83.5 (M/F) mg/kg/day	Residential LOC for MOE = 100	2–Generation Reproduction Study in Rats. Offspring LOAEL = 631/676 (M/F) mg/kg/day based on decreased pup body weights on day 21.
Dermal short-term (1 - 30 days)	Dermal study Systemic NOAEL= 100 mg/kg/day	Residential LOC for MOE = 100	28–Day Dermal Toxicity Study in Rats. Systemic LOAEL = 1,000 mg/kg/day based on decreased body weight gain in females.
Inhalation short-term (1 - 30 days)	Oral study NOAEL= 50 mg/kg/day (inhalation absorption factor = 100%)	Residential LOC for MOE = 100	Developmental Toxicity Study in Rabbits. LOAEL = 100 mg/kg/day based on increased incidence of abnormal shaped hearts in fetuses.
Cancer (oral, dermal, inhalation)	Classification: Not Likely to be carcinogenic to humans		

*The reference to the Special FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been previously established for trifloxysulfuron. Tolerances being established under § 180.591 include almond; almond hulls; cotton, undelinted seed; cotton, gin byproducts; fruit, citrus, Group 10; sugarcane, and tomato. No tolerances are required for meat, milk, poultry or eggs. Risk assessments were conducted by EPA to assess dietary exposures from trifloxysulfuron in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% of the crops from registered uses are treated and that residues of trifloxysulfuron are at tolerance levels. Anticipated residues were not used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% of the crops from registered uses are treated and that residues of trifloxysulfuron are at tolerance levels. Anticipated residues were not used.

iii. *Cancer.* Trifloxysulfuron has been classified as ''not likely to be carcinogenic in humans.'' Therefore a quantitative assessment of aggregate cancer risk was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for trifloxysulfuron in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of trifloxysulfuron.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in

Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to trfloxysulfuron they are further discussed in the aggregate risk sections Unit E.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of trifloxysulfuron and its metabolites of concern for acute exposures are estimated to be 6.47 parts per billion (ppb) for surface water and 0.054 ppb for ground water. The EECs for chronic exposures are estimated to be 0.52 ppb for surface water and 0.054 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifloxysulfuron will be registered for use on the following non-dietary sites: Turf—golfcourses. The risk assessment was conducted using the following exposure assumptions: The Agency has examined the potential postapplication exposure to individuals over 12 years of age from the proposed use of trifloxysulfuron on golf courses. Duration of such exposure is anticipated to be short-term. The short-term dermal post-application exposure for golfing was estimated to be 0.0005 mg/kg/day. The estimate assumes that 18 holes of golf are played in 4 hours, that there are 0.015 μg ai/cm^2 of turf, that the transfer coefficient for turf is 500 cm^2/hour, and that the average golfer weighs 60 kg. Transfer coefficients are based on surrogate data, from chlorothalonil and chlorpyrifos, describing actual, median-value exposures to golfers.

The vapor pressure of trifloxysulfuron is very low and, therefore, inhalation exposure to trifloxysulfuron vapor is not expected to occur. The Agency has not assessed inhalation exposure to trifloxysulfuron due to residential activities.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether trifloxysulfuron has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to trifloxysulfuron and any other substances and trifloxysulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that trifloxysulfuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There was no evidence of increased quantitative or qualitative susceptibility in the developmental toxicity study in rats or in the 2–generation reproduction study in rats. In the developmental toxicity study in rabbits, there was an increase in quantitative susceptibility based upon the presence of abnormally shaped heart in one fetus at 100 mg/kg/day. Three additional fetuses from two litters at 250 mg/kg/day also had abnormally shaped hearts. The degree of concern for this finding was low because there was a clear NOAEL for this effect, only 1 fetus had the effect at the LOAEL, and this effect was used as a toxicological endpoint in appropriate risk assessments. There are no residual uncertainties for prenatal and/or postnatal toxicity.

3. *Conclusion*. There is a complete toxicity data base for trifloxysulfuron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X. This determination was based on the following:

- The toxicological data base is complete for FQPA assessment.
- There was no evidence of increased quantitative or qualitative susceptibility in the developmental toxicity study in rats. At the limit dose, maternal effects were decreased food consumption during treatment and decreased body weight gain during post-treatment. The only fetal findings noted at the limit dose were a slight decrease in fetal body weights, and an increase in minimal skeletal findings and poor/absent skeletal ossification.
- There was evidence of increased quantitative susceptibility in the developmental toxicity study in rabbits. The maternal NOAEL was 100 mg/kg/day based on increased mortality and

increased vaginal/anal bleeding at the LOAEL of 250 mg/kg/day. The developmental NOAEL was 50 mg/kg/day based on an increased incidence of abnormally shaped hearts at the LOAEL of 100 mg/kg/day (one fetus at 100 mg/kg/day). Three additional fetuses from two litters at 250 mg/kg/day also had abnormally shaped hearts. In historical control data provided by the registrant, there were no reported instances of abnormally shaped hearts. The degree of concern is low for the quantitative evidence of susceptibility seen in the rabbit developmental study because there was a clear NOAEL for this effect, only one fetus had the effect at the LOAEL, this effect was used as a toxicological endpoint in appropriate risk assessments.

- There was no evidence of increased quantitative or qualitative susceptibility in the 2–generation reproduction study in rats.
- There are no residual uncertainties for prenatal and/or postnatal toxicity.
- A developmental neurotoxicity study in rats is not required.
- The acute and chronic dietary food exposure assessments assumed tolerance level residue data and 100% crop treated. The acute and chronic risk assessments will not underestimate exposure or risk since the exposures are based on reliable data derived from studies designed to produce worst-case residues.
- The dietary drinking water assessment used concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded. Furthermore, EPA used a highly conservative technique to estimate concentrations of non-parent residues of concern.
- The non-dietary exposure assessment will not underestimate postapplication exposure to golfers resulting from the use of trifloxysulfuron-sodium on golf course turf.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to trifloxysulfuron will occupy <1% of the aPAD for the U.S. population, <1% of the aPAD for females 13-49 years, <1% of the aPAD for all infants > 1 year old and <1% of the aPAD for children 1–12 year old. In addition, there is potential for acute dietary exposure to trifloxysulfuron in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLOXYSULFURON

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	6.0	<1	6.47	0.054	210,000
All infants < 1 year old	6.0	<1	6.47	0.054	60,000
Children 1-2 year old	6.0	<1	6.47	0.054	60,000
Females 13-49 years old	0.05	<1	6.47	0.054	15,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to trifloxysulfuron from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for females 13–49 years, <1% of the cPAD for all infants > 1 year old and <1% of the cPAD for children 1–2 years old. Based the use pattern, chronic residential exposure to residues of trifloxysulfuron is not expected. In addition, there is potential for chronic dietary exposure to trifloxysulfuron in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLOXYSULFURON

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.237	<1	0.52	0.054	8300
All infants < 1 year old	0.237	<1	0.52	0.054	2,400
Children 1–2 years old	0.237	<1	0.52	0.054	2,400
Females 13–49 years old	0.237	<1	0.52	0.054	7,100

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Trifloxysulfuron is proposed for a use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for trifloxysulfuron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 20,000 for all affected populations including the general U. S. population, youth 13–19 years old, adults 20–49 years old, and females 13–49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of trifloxysulfuron in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO TRIFLOXYSULFURON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U. S. population	170,000	100	0.52	0.054	28,000
Youth 13–19 years old	170,000	100	0.52	0.054	24,000
Adults 20–49 years old	180,000	100	0.52	0.054	28,000
Females 13–49 years old	180,000	100	0.52	0.054	24,000

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Trifloxysulfuron is not registered for use any sites that would result in any intermediate residential exposure. Therefore, the aggregate risk has not been assessed for intermediate scenarios.

5. *Aggregate cancer risk for U.S. population*. Trifloxysulfuron has been classified as ''not likely to be carcinogenic to humans.'' Therefore, no cancer risk is expected.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to trifloxysulfuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high performance liquid chromatography/ultravoilet (HPLC/UV) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue limits (MRLs) established for trifloxysulfuron. Therefore, international harmonization is not an issue with the proposed uses.

C. Conditions

No conditions are required to support these tolerances.

V. Conclusion

Therefore, the tolerance is established for residues of trifloxysulfuron, *N*-[[4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(2,2,2-trifluoroethoxy)-2-pyridinesulfonamide, in or on almond at 0.02 ppm; almond, hulls at 0.01 ppm; fruit, citrus, group 10 at 0.03 ppm; cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 1.0 ppm; sugarcane at 0.01 ppm, and tomato at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with

appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0286 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 17, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0286. to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 4, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.591 is added to read as follows:

§ 180.591 Trifloxysulfuron; tolerances for residues

(a) *General.* Tolerances are established for residues of the herbicide trifloxysulfuron, *N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(2,2,2-trifluoroethoxy)-2-pyridinesulfonamide in or on the following raw agricultural commodities.

Commodity	Parts per million
Almond	0.02
Almond, hulls	0.01
Fruit, citrus, Group 10	0.03
Cotton, undelinted seed	0.05
Cotton, gin byproducts	1.0
Sugarcane	0.01
Tomato	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–23428 Filed 9–16–03; 8:45am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0306; FRL–7327–5]

Thiamethoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of thiamethoxam and its metabolite in or on imported coffee, pecan, stone fruit, succulent bean, and sunflower. Syngenta Crop Protection, Inc. and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 17, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0306, must be received on or before November 17, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address: *daniel.dani@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0306. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html/*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of April 2, 2003 (68 FR 16040) (FRL–7298–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Pub. L. 104–170), announcing the filing of pesticide petitions (3E06524, 2E06505, 2E06508, 1E06349, and 0F6142) by IR-4, 681 U.S. Highway #1 South, North Bunswick, NJ 08902–3390 and Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. That notice included a summary on the petitions prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.565 be amended by establishing tolerances for the combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite (*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine), in or on imported coffee at 0.05 parts per million (ppm) (1E6349), pecan at 0.02 ppm (0F6142), stone fruit group 12 at 0.5 ppm (2E6505), succulent bean at 0.02 ppm (2E6508), and sunflower at 0.02 ppm (3E6524).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for the combined residues of thiamethoxam and its metabolite on imported coffee at 0.05 ppm, pecan at 0.02 ppm, stone fruit group 12 at 0.5 ppm, succulent bean at 0.02 ppm, and sunflower at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by thiamethoxam as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in Unit III.A. of the **Federal Register** of November 1, 2002 (67 FR 66561) (FRL–7279–6).

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safty factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF 10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 100 mg/kg/day UF = 100 Acute RfD = 1 mg/kg/day	FQPA SF = 10 aPAD = acute RfD FQPA SF = 0.1 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 500 mg/kg/day based on treatment-related neurobehavioral effects observed in the FOB and LMA testing (drooped palpebral closure, decreased rectal temperature and locomotor activity, increased forelimb grip strength)
Chronic dietary (all populations)	NOAEL = 0.6 mg/kg/day UF = 100 Chronic RfD = 0.006 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD FQPA SF = 0.0006 mg/kg/day	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males
Oral non-dietary (all durations)	NOAEL = 0.6 mg/kg/day	LOC for MOE = 1,000 (Residential)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males
Dermal (all durations) (Residential)	Oral study NOAEL = 0.6 mg/kg/day (dermal absorption rate = 27%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males
Inhalation (all durations) (Residential)	Oral study NOAEL = 0.6 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males
Cancer (oral, dermal, inhalation)	Likely carcinogen for humans based on increased incidence of hepatocellular adenomas and carcinomas in male and female mice. Quantification of risk based on most potent unit risk: Male mouse liver adenoma and/or carcinoma combined tumor rate. The upper bound estimate of unit risk, Q_1^* $(mg/kg/day)^{-1}$ is 3.77×10^{-2} in human equivalents		

*The reference to the FQPA safty factor refers to any additional safty factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.565) for the combined residues of thiamethoxam and its metabolite, in or on a variety of raw agricultural commodities. Tolerances for thiamethoxam are established on barley, canola, cotton, sorghum, wheat, tuberous and corm vegetables crop subgroup, fruiting vegetables crop group, tomato paste, cucurbit vegetables crop group, pome fruits crop group, field corn forage, field corn stover, sweet corn stover, field corn grain, popcorn grain, and sweet corn (kernal and cob with husk removed) milk and the meat and meat by products of cattle, goats, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from thiamethoxam in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) with the Food Commodity Intake Database (FCID) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The residues of concern for the acute analysis are thiamethoxam and its metabolite. The assessment assumed that 100% of the registered and proposed crops were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the aPADs are all below 100%). The most highly exposed subgroup is children 1 to 2 years of age, which utilizes 3% of the aPAD.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM™ with the FCID analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The residues of concern for the chronic analysis are thiamethoxam and its metabolite. The chronic analysis was based on average field trial residue values as well as percent crop estimates. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the cPADs are all below 100%). The most highly exposed subgroup is children 1 to 2 years of age, which utilizes 17% of the cPAD.

iii. *Cancer*. The residue of concern for the cancer analysis is thiamethoxam, per se. The residues of its metabolite were removed from the cancer analysis because the metabolite was found to be ''not likely to be carcinogenic to humans'' when it was evaluated as an active ingredient. The cancer analysis was based on average field trial residue values as well as percent crop treated (PCT) estimates. The estimated cancer risk from dietary exposure to thiamethoxam is 9.04×10^{-7}.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT. The Agency used PCT information in the following Table 2:

TABLE 2.—THIAMETHOXAM USES AND ESTIMATES OF CROP TREATED

Commodity	Percent Crop Treated[1]
Apples	5
Casabas	44
Cherries (sweet)	37
Cherries (tart)	88
Coffee	100
Crabapples	53
Crenshaws	44
Cucumbers	5
Field corn	6
Fruiting vegetables (except cucurbits - crop group 8)	15
Lima beans (fresh)	37
Lima beans (processed)	52
Loquats	53
Melons	13
Peaches	45

TABLE 2.—THIAMETHOXAM USES AND ESTIMATES OF CROP TREATED—Continued

Commodity	Percent Crop Treated[1]
Pears	9
Pecans	38
Plums	60
Prunes	43
Pumpkins	44
Quinces	53
Snap beans (fresh)	26
Snap beans (processed)	38
Squash	44
Sunflower	25
Tuberous and corm vegetables - crop subgroup 1C	9

The Agency believes that the three conditions listed in this Unit have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which thiamethoxam may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of thiamethoxam.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to thiamethoxam, they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of thiamethoxam for acute exposures are estimated to be 7.1 parts per billion (ppb) for surface water and 1.94 ppb for

ground water. The EECs for chronic non-cancer exposures are estimated to be 0.43 ppb for surface water and 1.94 ppb for ground water. The EECs for cancer exposures are estimated to be 0.13 ppb for surface water and 1.94 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether thiamethoxam has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to thiamethoxam and any other substances and thiamethoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thiamethoxam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The developmental toxicity studies indicated no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetus to *in utero* exposure based on the fact that the developmental NOAELs are either higher than or equal to the maternal NOAELs. However, the reproductive studies indicate effects in males rats in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups when compared to the parents.

3. *Conclusion*. There is a complete toxicity data base for thiamethoxam and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be retained. The 10X safety factor is retained based on the following factors: Effects on endocrine organs observed across species; the significant decrease in alanine amino transferase levels in the companion animal studies in the dog studies; the mode of action of this chemical in insects (interferes with the nicotinic acetyl choline receptors of the insect's nervous system); the transient clinical signs of neurotoxicity in several studies across species; and the suggestive evidence of increased quantitative susceptibility in the rat reproduction study.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to thiamethoxam will occupy 3% of the aPAD for the U.S. population, 2% of the aPAD for females 13 years and older, 9% of the aPAD for all infants (less than 1 year old), and 10% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to thiamethoxam in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO THIAMETHOXAM

Population Subgroup	aPAD (mg/kg)	%aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. population	0.1	3	7.1	1.94	2,400
All infants (<1 year old)	0.1	9	7.1	1.94	910
Children (1 - 2 years old)	0.1	10	7.1	1.94	900
Females (13 - 49 years old)	0.1	2	7.1	1.94	2,900

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thiamethoxam from food will utilize 6% of the cPAD for the U.S. population, 14% of the cPAD for all infants (less than 1 year old), and 17% of the cPAD for children 1 to 2 years old. There are no residential uses for thiamethoxam that result in chronic residential exposure to thiamethoxam. In addition, there is potential for chronic dietary exposure to thiamethoxam in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO THIAMETHOXAM

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.0006	6	0.43	1.94	20
All infants (<1 year old)	0.0006	14	0.43	1.94	5.1
Children (1 - 2 years old)	0.0006	17	0.43	1.94	5.0

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The dietary cancer risk from residues in food is 9.04×10^{-7}. A cancer DWLOC is calculated only for the general U.S. population. For risk management purposes, EPA considers a cancer risk to be greater than negligible when it exceeds the range of 1 in 1 million. EPA has generally treated cancer risks up to 3 in 1 million as within the range of 1 in 1 million. The DWLOC for cancer aggregate risk (no residential uses) is calculated using the following equations:

DWLOC cancer (μg/L) = chronic water exposure milligrams/kilogram/day (mg/kg/day) x (body weight/kg) /consumption (L) x 10^{-3} mg/μg

Chronic water exposure (mg/kg/day) = negligible risk / Q* - (chronic food exposure)(mg/kg/day)

Assuming that the negligible risk value could be as high as 3×10^{-6}, the chronic water exposure value is estimated to be: $3 \times 10^{-6} / 3.77 \times 10^{-2}$ - 0.000024 = 0.000056 mg/kg/day

The DWLOC cancer = 0.000056 mg/kg/day x 70 kg / 2L x 10^{-3} mg/μg = 1.95 μg/L

The surface water EEC is 0.13 μg/L and the ground water EEC is 1.94 μg/L. Since the ground water value is greater than the surface water value, it will be used for comparison purposes and will protect for any concerns for surface water concentrations. Since the cancer DWLOC is not exceeded by the ground water EEC, the cancer risk is below EPA's level of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to thiamethoxam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (solvent extraction, liquid-liquid partitioning and solid-phase extraction cleanup, and high performance liquid chromatography using ultra-violet detection (HPLC/UV) analysis) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no international residue limits for thiamethoxam.

V. Conclusion

Therefore, the tolerances are established for combined residues of thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite (*N*-(2-chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine), in or on imported coffee at 0.05 ppm, pecan at 0.02 ppm, stone fruit

group 12 at 0.5 ppm, succulent bean at 0.02 ppm, and sunflower at 0.02.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0306 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 17, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0306, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve 1 or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.565 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Bean, succulent	0.02
* * * * * * *	
Coffee[1]	0.05
* * * * * * *	
Fruit, stone, group 12	0.5
* * * * * * *	
Pecans	0.02
* * * * * * *	
Sunflower	0.02

[1]There are no U.S. registrations as of September 17, 2003.

* * * * *

[FR Doc. 03–23852 Filed 9–15–03; 1:28 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2830; MM Docket No. 01–244, RM–10234; MM Docket No. 01–245, RM–10235]

Digital Television Broadcast Service; Tyler and Lufkin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, denies a petition for reconsideration filed by International Broadcasting Network of the Report and Order, which substituted DTV channel 10 for DTV channel 38 at Tyler, Texas, and DTV channel 11 for DTV channel 43 at Lufkin, Texas. *See* 67 FR 63852, October 16, 2002. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 01–244, RM–10234, adopted September 4, 2003, and released September 12, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–23632 Filed 9–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 091103A]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2003 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.),September 12, 2003, through 1200 hrs, A.l.t., October 1, 2003.

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

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

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003), is 900 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.''

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

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

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

Dated: September 11, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–23758 Filed 9–12–03; 2:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 180

Wednesday, September 17, 2003

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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 932, and 955

[No. 2003–21]

RIN 3069–AB18

Federal Home Loan Bank Acquired Member Assets

AGENCY: Federal Housing Finance Board.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is withdrawing its proposed rule that would have amended its Acquired Member Assets (AMA) regulation to place greater responsibility with each Federal Home Loan Bank (Bank) to manage its AMA program, subject to ongoing supervisory review by the Finance Board.

FOR FURTHER INFORMATION CONTACT: Scott Smith, Associate Director, Office of Supervision; *smiths@fhfb.gov* or (202) 408–2991; Sharon Like, Senior Attorney Advisor, Office of General Counsel, *likes@fhfb.gov* or (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Finance Board proposed a rule in the **Federal Register** of July 1, 2003, to amend its AMA regulation to place greater responsibility with each Bank to manage its AMA program, subject to ongoing supervisory review by the Finance Board. *See* 68 FR 39027 (July 1, 2003). The proposed rule would have maintained the core provisions in the current rule relating to safety and soundness, but would have been less prescriptive and simpler than the current rule. The proposed rule also would have codified the authority of a Bank to acquire as AMA instruments that are created by Bank members or housing associates in cooperation with a Bank and that represent an interest in loans that individually could qualify as AMA. The proposed rule provided for a 60-day public comment period, which closed September 2, 2003.

II. Reasons for Withdrawal of the Proposed Rule

All twelve Banks as well as other interested parties have requested that the Finance Board extend the original 60-day public comment period for an additional 90 days, to provide additional time to submit comments on a number of complex issues raised by the proposed rule.

The Finance Board recognizes that the proposed rule could better reflect the intent of the Finance Board if it were written with greater clarity, and that a greater degree of clarity would facilitate the submission of informed and meaningful comments to the Finance Board. The Finance Board believes that the rulemaking process would be better advanced by the withdrawal of the proposed rule and subsequent issuance of a revised proposed rule, than by a simple extension of the comment period. Therefore, the Finance Board is withdrawing the proposed rule. The Finance Board will retain the comment letters received on the proposed rule and will incorporate them into the public record of a subsequent proposed rule addressing the AMA regulation.

List of Subjects

12 CFR Part 900

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 932

Capital, Credit, Federal home loan banks, Housing, Investments, Reporting and recordkeeping requirements.

12 CFR Part 955

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby withdraws the Proposed Rule published at 68 FR 39027 on July 1, 2003.

Dated: September 11, 2003.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–23762 Filed 9–16–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900 and 998

[No. 2003–19]

RIN 3069–AB22

Registration by Each Federal Home Loan Bank of a Class of Its Securities Under the Securities Exchange Act of 1934

AGENCY: Federal Housing Finance Board.

ACTION: Proposed regulation.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to adopt a regulation requiring each Federal Home Loan Bank (Bank) to prepare and make public certain disclosures relating to its business and financial condition. Each Bank will satisfy these disclosure requirements by voluntarily registering a class of its securities with the Securities and Exchange Commission (SEC) under the provisions of section 12(g) of the Securities Exchange Act of 1934. By voluntarily registering a class of its securities, each Bank will subject itself to the 1934 Act's periodic disclosure regime, as interpreted and administered by the SEC.

DATES: Written comments on the proposed regulation must be received by January 15, 2004.

ADDRESSES: Send comments by electronic mail to *comments@fhfb.gov,* by facsimile to 202/408–2530, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, Attn: Public Comments.

FOR FURTHER INFORMATION CONTACT: Arnold Intrater, General Counsel, 202/408–2536, *intratera@fhfb.gov,* or John P. Foley, Senior Attorney-Advisor, Office of General Counsel, 202/408–2932, *foleyj@fhfb.gov,* or Joseph A. McKenzie, Deputy Chief Economist, Office of Supervision, 202/408–2845, *mckenziej@fhfb.gov,* Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Comments

The Finance Board invites comments on all aspects of the proposed regulation, including legal and policy considerations, and assessments of the

proposed regulation's impact on access to capital markets, cost of funds, and other costs to the Bank System. The Finance Board will take all comments into consideration before issuing a final regulation. For copies of public comments, contact Karen Rogers, Executive Secretary, by e-mail at *rogersk@fhfb.gov,* by facsimile at 202/408–2530, or by telephone at 202/408–2910.

II. Statutory and Regulatory Background

A. The Banks

The 12 Banks are privately owned ''government-sponsored enterprises'' (GSEs) organized under the authority of the Federal Home Loan Bank Act (Bank Act) [1] to support the financing of housing and community lending by their members.[2] The Bank Act requires the Banks to adopt a cooperative structure. Eligible financial institutions (principally, depository institutions) may become members of a Bank if they satisfy certain statutory and regulatory criteria and purchase a specified amount of a Bank's capital stock.[3] Only Bank members may own Bank capital stock and share in Bank profits. Only Bank members, and certain eligible housing associates (such as State housing finance agencies), may borrow from or use other Bank products and services.[4]

B. The Finance Board

The Banks' regulator is the Finance Board, an independent agency in the executive branch of the U.S. government. The Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. To the extent consistent with that duty, the Finance Board also must supervise the Banks, ensure that the Banks carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets.[5]

C. Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act [6] (GLB Act) required the Banks to adopt new risk-based capital structures. On January 30, 2001, the Finance Board published a final regulation implementing new capital structure requirements for the Banks.[7] As of July 18, 2002, the Finance Board had approved a new capital plan for each of the Banks. To date, six Banks have implemented their capital plans and are operating under new capital structures. Until a Bank implements its capital plan, its capital structure is governed by the Finance Board's pre-GLB Act regulations.

D. Bank System Securities

Consolidated Obligations. The Bank Act authorizes the individual Banks to issue debt securities, subject to Finance Board regulation.[8] While the Finance Board has not adopted regulations permitting the issuance of debt securities by individual Banks and no Bank has ever individually issued debt securities, the Finance Board has adopted regulations authorizing the Office of Finance (OF), a joint office of the Banks, as agent for the Banks, to offer, issue and service consolidated obligations on which the Banks are jointly and severally liable.[9] The Banks, together with the OF, comprise the Bank System. The Banks' GSE status enables the OF to issue consolidated obligations at favorable rates. The Banks pass along their funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services to their members at lower rates than the members generally could obtain elsewhere. At June 30, 2003, the Bank System had $507 billion of consolidated obligation bonds (maturity of one year or more) and $134 billion of consolidated obligation discount notes (maturity of less than one year) outstanding.

Equity Securities. Banks that have implemented new capital plans may issue Class A stock or Class B stock (and each class may have subclasses). Shares of both Class A stock and Class B stock are issued at a par value of $100 per share. Shares of Class A stock are redeemable in cash on six-months written notice to a Bank. Shares of Class B stock are redeemable in cash on five-years written notice to a Bank. The redemption price for shares of both Class A stock and Class B stock is $100 per share.[10] Banks that have not implemented new capital plans issue only one class of capital stock redeemable by the Bank on six-months notice. This capital stock is also purchased by the member and redeemed by the Bank at a par value of $100 per share. Each Bank may also repurchase outstanding shares of any type of Bank capital stock at a price of $100 per share in certain circumstances.

E. 1933 Act and 1934 Act Exemptions Applicable to Bank Securities

1933 Act Exemption for Bank Equity and Debt Securities. Equity securities issued by individual Banks to their members and debt securities issued by the OF as agent for the Banks to public investors are exempt from the registration requirements of the Securities Act of 1933 (1933 Act) [11] because the Banks are persons ''controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.'' [12]

1934 Act Exemption for Bank Debt Securities. Debt securities issued by the OF as agent for the Banks are exempt from the registration requirements of the Securities Exchange Act of 1934 (1934 Act).[13] Sections 3(a)(12)(A) and 3(a)(42)(B) of the 1934 Act designate as exempt securities, ''government securities,'' including ''securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors.'' [14] In Release 34–1168 dated April 28, 1937, the SEC announced the Secretary of the Treasury's designation for exemption of those securities issued by the Federal Home Loan Bank Board (the predecessor agency to the Finance Board) or by the Banks under the authority of Section 11 of the Bank Act. The consolidated obligations issued by the OF as agent for the Banks are issued under the authority of Section 11(a) of the Bank Act.

Bank Equity Securities under the 1934 Act. The Secretary of the Treasury has not designated Bank equity securities for exemption under the 1934 Act.

Basis for 1933 Act and 1934 Act Exemptions. The Banks' 1933 Act and 1934 Act exemptions rest on a presumption, and the Finance Board's supervisory and examination authority over the Banks includes a responsibility to ensure, that the securities activities of government instrumentalities are conducted in the public interest and for the protection of investors. This obligation was reinforced when

[1] 12 U.S.C. 1421 *et seq.*

[2] 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j).

[3] 12 U.S.C. 1424, 1426.

[4] 12 U.S.C. 1426, 1430, 1430b.

[5] 12 U.S.C. 1422a(a)(3)(A), (B).

[6] Pub. L. 106–102 (1999).

[7] 66 FR 8262 (January 30, 2001).

[8] 12 U.S.C. 1431(a).

[9] 12 CFR 985.3(a). Prior to 2001, the OF performed the same functions for the Finance Board, which had issued consolidated obligations on behalf of the Banks pursuant to Section 11(c) of the Bank Act. The Finance Board no longer issues consolidated obligations on behalf of the Banks under Section 11(c).

[10] 12 CFR 931.1.

[11] 15 U.S.C. 77a *et seq.*

[12] 15 U.S.C. 77c(a)(2).

[13] 15 U.S.C. 78a *et seq.*

[14] 15 U.S.C. 78c(a)(42)(B).

Congress assigned to the Finance Board the statutory duty ''to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.'' [15]

F. Current Bank System Securities Disclosure

Bank System Combined Reports. Subject to certain specifically enumerated exceptions, Finance Board regulations currently require the OF to prepare combined annual and quarterly financial reports for the Bank System (Bank System Combined Reports) in scope, form and content generally consistent with the requirements of SEC Regulation S–K and Regulation S–X.[16] Under these Finance Board regulations, the OF prepares an annual and three quarterly Bank System Combined Reports. The annual report portion of the Bank System Combined Reports contains: (i) Audited balance sheets for the prior two years and income statements for the prior three years; (ii) a discussion and analysis of the Bank System's financial condition and results of operations; and (iii) supplemental information describing the Bank System's business and senior Bank System management. The quarterly report portions of the Bank System Combined Reports contain unaudited interim financial statements with accompanying discussion and analysis of the Bank System's financial condition and results of operations.

Bank Annual and Quarterly Reports. Finance Board regulations also require that any financial statements contained in an annual or quarterly financial report issued by an individual Bank be consistent in both form and content with the financial statements presented in the Bank System Combined Reports.[17] Except for this obligation, there is no Finance Board regulatory requirement that individual Bank annual or quarterly reports be in scope, form and content generally consistent with the requirements of SEC Regulation S–K and Regulation S–X. Each Bank currently prepares and distributes to its members an annual report containing audited financial statements and a management discussion and analysis section. Each Bank also distributes brief quarterly or semi-annual summary financial reports to its members.

Additional OF 1933 Act Disclosure Documents. The OF distributes various offering documents to investors in connection with issuances of Bank System consolidated obligations. These OF disclosure documents are modeled on the disclosure documents that are prepared by issuers of investment grade debt who issue debt securities under cover of a Form S–3 shelf registration statement.

G. Reassessment of the Securities Disclosure of the Individual Banks

Bank System's Need to Remain Adequately Capitalized

Comprehensive, fully transparent securities disclosure is necessary if the Banks are to maintain the long-term confidence of the investment community and the national rating agencies. The rules and regulations that form the 1934 Act's periodic disclosure system establish the best practices standard for disclosure by U.S. corporations. The SEC has the resources and the expertise to ensure that individual Bank disclosure documents meet this standard. Congress established the SEC in 1934 to enforce the newly enacted federal securities laws, to promote stability in the financial markets and to protect investors. For the last 69 years, the SEC has been in the forefront of investor protection and has significantly contributed to the integrity of the United States securities markets.

Because of the SEC's expertise and resources and the credibility that SEC review brings to a registrant's financial statements, the Finance Board has concluded that the Bank System's ability to access the capital markets may be better secured if each of the 12 Banks voluntarily registers a class of its securities with the SEC under Section 12(g) of the 1934 Act, thereby subjecting the Banks to the SEC's periodic disclosure system, as interpreted and administered by the SEC.

The Finance Board's proposal that each Bank should be required to voluntarily register a class of its securities under Section 12(g) of the 1934 Act also rests on the fact that Bank accounting and financial statement reporting issues have become significantly more complex in recent years because of new Financial Accounting Standards Board (FASB) statements. In particular, Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities,* has given rise to interpretative complexities. These more complex FASB financial statement reporting requirements necessitate more comprehensive and detailed disclosure by individual Banks. The SEC staff has the extensive accounting expertise required to review this Bank disclosure.

Finally, the Finance Board recognizes that Fannie Mae has voluntarily registered its common stock with the SEC under Section 12(g) of the 1934 Act and that Freddie Mac has agreed to do so upon the completion of its restatement of its financial statements. There may be merit in having the core securities disclosures of all of the housing GSEs overseen by the same disclosure regulator.

Finance Board Will Continue to Oversee the Bank System Combined Reports in Consultation with the SEC. The OF is a joint office of the 12 Banks and is not a separate legal entity. Thus, the OF would not fit into a 1934 Act registration regime that is premised on registrants being separate legal entities with distinct managements. Moreover, the Bank System Combined Reports combine rather than consolidate financial information from each of the 12 Banks. If each of the 12 Banks subjects itself to the SEC's integrated disclosure regime, this will make available to the OF and the Finance Board 1934 Act periodic disclosure documents prepared by each Bank that have been reviewed by SEC staff. With this foundation, the Finance Board believes that its extensive knowledge of the Bank System and the Bank System Combined Reports make the Finance Board the appropriate regulator to continue to supervise the Bank System Combined Report's disclosure. In carrying out this responsibility, the Finance Board will consult with the SEC.

III. Analysis of Proposed Regulation

A. Section 900.3 Definitions

The proposed regulation would amend § 900.3[18] to include the following three additional definitions of terms related to securities disclosure that are used in the proposed regulation: ''GLB Act,'' ''SEC,'' and ''1934 Act.''

B. Section 998.1 General

1. Section 998.1(a) Purpose

This section describes the purpose of part 998, which is to require each Bank to prepare and submit the financial and other disclosures required by the Finance Board by voluntarily registering a class of its securities with the SEC under Section 12(g) of the 1934 Act. The voluntary registration of a class of the securities of each Bank will bring each Bank under the 1934 Act periodic disclosure regime, as interpreted and administered by the SEC.

[15] 12 U.S.C. 1422a(a)(3)(B)(iii).

[16] 12 CFR 985.6(b)(1).

[17] 12 CFR 989.4.

[18] 12 CFR 900.3.

2. Section 998.1(b) No Limitation on Safety and Soundness Authority and Access to Capital Market Responsibilities

This section would state that the proposed regulation would not limit or restrict the Finance Board's ability carry out its responsibilities under the Bank Act including its responsibility to act under its safety and soundness authority to regulate the Banks, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations. This section would not alter the Finance Board's responsibility to ensure the Bank System's continued access to the capital markets.

C. Section 998.2 Bank Periodic Disclosures

1. Section 998.2(a) Periodic Disclosures

This section would require each Bank to prepare and make public disclosures relating to its financial condition, results of operations, trends or uncertainties affecting its business, and its management's assessment of its business and financial condition that includes supporting financial information and certifications.

2. Section 998.2(b) Satisfaction of Bank Periodic Disclosure Requirement

This section would require each Bank to satisfy the disclosure requirements of proposed § 998.2(a) by subjecting itself to the 1934 Act's periodic disclosure regime and preparing an annual report, quarterly reports, current reports and such other materials as may be required under the SEC's rules and regulations, including SEC and SEC staff interpretations and rules governing audited financial statements.

3. Section 998.2(c) Voluntary Registration of a Class of the Securities of Each of the Banks with the SEC

This section would establish a mechanism for each Bank to subject itself to the SEC's 1934 Act period disclosure regime. That mechanism would be the voluntary registration of a class of the securities of each Bank with the SEC under Section 12(g) of the 1934 Act. Each Bank would have to agree to voluntarily register a class of its securities with the SEC under Section 12(g) of the 1934 Act within 120 days of the adoption of this proposed regulation as a final regulation.

4. Section 998.2(e) Submission of Disclosures to Finance Board

This section would require each Bank to provide to the Finance Board on a concurrent basis copies of all disclosure documents filed with the SEC.

IV. Regulatory Flexibility Act

The proposed regulation, if adopted as a final regulation, will apply only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA).[19] Therefore, in accordance with section 605(b) of the RFA,[20] the Finance Board hereby certifies that the proposed regulation, if promulgated as a final regulation, will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The proposed regulation does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995.[21] Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Parts 900 and 998

Federal home loan banks, Reporting and recordkeeping requirements, and Securities disclosure.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, of the *Code of Federal Regulations,* as follows:

PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

2. Amend § 900.3 by adding the following three definitions in alphabetical order:

§ 900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

* * * * *

GLB Act means the Gramm-Leach-Bliley Act (Pub. L. 106–102 (1999)).

* * * * *

SEC means the U.S. Securities and Exchange Commission.

* * * * *

1934 Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

* * * * *

3. Add Subchapter M (part 998) to title 12, chapter IX, to read as follows:

[19] 5 U.S.C. 601(6).

[20] 5 U.S.C. 605(b).

[21] 44 U.S.C. 3501 *et seq.*

Subchapter M—Bank System Securities Disclosure

PART 998—VOLUNTARY REGISTRATION OF A CLASS OF SECURITIES OF EACH BANK UNDER SECTION 12(g) OF THE 1934 ACT

Sec.
998.1 General.
998.2 Bank periodic disclosures.

Authority: 12 U.S.C. 1422b(a), 1422a(a)(3)(A), 1422a(a)(3)(B)(iii).

§ 998.1 General.

(a) *Purpose.* The purpose of this part is to require each Bank to prepare and publicly distribute certain financial and other disclosures. The required disclosures are those that would be provided by 1934 Act registrants subject to the 1934 Act's periodic disclosure regime, as interpreted and administered by the SEC.

(b) *No limitation on safety and soundness authority or access to capital markets responsibility.* This part does not limit or restrict the Finance Board's ability carry out its responsibilities under the Act including its responsibility to act under its safety and soundness authority to regulate the Banks, including conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules and regulations. This part shall not alter the Finance Board's responsibility to ensure the Bank System's continued access to the capital markets.

§ 998.2 Bank periodic disclosures.

(a) *Periodic disclosures.* Each Bank shall prepare and make public disclosures relating to its financial condition, results of operations, trends or uncertainties affecting its business, and its management's assessment of its business and financial condition that includes supporting financial information and certifications.

(b) *Satisfaction of Bank periodic disclosure requirement.* Each Bank shall satisfy the disclosure requirements of paragraph (a) of this section by subjecting itself to the 1934 Act's periodic disclosure regime and preparing an annual report, quarterly reports, current reports and such other materials as may be required under the SEC's rules and regulations, including SEC and SEC staff interpretations and rules governing audited financial statements.

(c) *Requirement to voluntarily register a class of securities.* Each Bank shall subject itself to the 1934 Act's periodic disclosure regime by agreeing to voluntarily register a class of its securities with the SEC under Section

12(g) of the 1934 Act (15 U.S.C. 78l(g)) within 120 days of the adoption of this regulation.

(d) *Submission of disclosures to Finance Board.* Unless otherwise required by the Finance Board, each Bank shall provide to the Finance Board on a concurrent basis copies of all disclosure documents filed with the SEC.

Dated: September 11, 2003.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–23761 Filed 9–16–03; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–21–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines. That AD currently requires initial and repetitive inspections of the master magnetic chip detector (MCD) or the No. 1, 2, 3 bearing chamber MCD. This proposed AD would require the MCD inspections, and would require replacing certain No. 3 bearings and replacing or recoating certain high pressure compressor (HPC) stubshaft assemblies as mandatory terminating actions to the repetitive MCD inspections. This proposed AD is prompted by the development of a terminating action to the repetitive MCD inspections. We are proposing this AD to prevent failure of the No. 3 bearing, which could result in in-flight shutdown (IFSD) and smoke in the cockpit and cabin.

DATES: We must receive any comments on this proposed AD by November 17, 2003.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510.

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

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–21–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On May 29, 2003, the FAA issued AD 2003–11–23, Amendment 39–13183 (68 FR 33621, June 5, 2003). That AD requires initial and repetitive inspections of the master MCD or the No. 1, 2, 3 bearing chamber MCD for contamination, and if the contamination is bearing material, replacement of the engine before further flight. That AD was prompted by 19 failures of the No. 3 bearing attributed to ball spalling and race fracture. Of the 19 failures, seven resulted in in-flight shutdowns (IFSDs) and 12 resulted in unscheduled engine removals (UERs). Of the seven IFSDs, two were associated with smoke in the cabin or cockpit. The smoke is a result of the ball spalling and race fracture of failed No. 3 bearings, P/N 2A1165, and occurs when there is hard particle contamination in the oil system. The contamination is caused by the release of coating particles on HPC stubshafts with low-energy plasma coating. The problem exists on certain No. 3 bearings, P/N 2A1165 that are less tolerant to damage from this contamination. This AD is prompted by the addition of a mandatory terminating action to the repetitive chip detector inspections. That condition, if not corrected, could result in failure of the No. 3 bearing, which could result in IFSD and smoke in the cockpit and cabin.

Actions Since AD 2003–11–23 Was Issued

Since that AD was issued, IAE has issued Service Bulletin No. V2500–ENG–72–0459, dated June 27, 2003, that provides procedures for replacing certain No. 3 bearings, P/N 2A1165, and replacing or recoating certain HPC stubshafts that have a low-energy plasma coating with HPC stubshafts that have a high-energy plasma coating.

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 products of this same type design. Therefore, we are proposing this AD, which would require:

- Initial inspection of the master MCD and the No. 1, 2, 3 bearing chamber MCD within 125 hours time-in-service (TIS) after the effective date of this AD,
- Repetitive inspections of the master MCD and the No. 1, 2, 3 bearing

chamber MCD within 125 hours time-since-last inspection,

• Replacement of the No. 3 bearing, P/N 2A1165, at the next shop visit for any reason, and

• Replacement of HPC stubshafts that have a low-energy plasma coating with HPC shafts that have a high-energy plasma coating or recoating with a high-energy plasma coating at the next shop visit for any reason.

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

On July 10, 2002, we 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

There are about 404 IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines of the affected design in the worldwide fleet. We estimate that 170 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 150 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $32,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $7,097,500.

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. Would 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 proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–21–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13183 (68 FR 33621, June 5, 2003), and by adding a new airworthiness directive to read as follows:

International Aero Engines AG: Docket No. 2003–NE–21–AD. Supersedes AD 2003–11–23, Amendment 39–13183.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 17, 2003.

Affected ADs

(b) This AD supersedes AD 2003–11–23, Amendment 39–13183.

Applicability

(c) This AD applies to International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines that have a serial number (SN) from V10600 through V11250 inclusive. These engines are installed on, but not limited to, Airbus Industrie A319, A320, and A321 series airplanes.

Unsafe Condition

(d) This AD was prompted by reports of No. 3 bearing failures that resulted in in-flight shutdown (IFSD) and smoke in the cockpit and cabin. We are issuing this AD to prevent failure of the No. 3 bearing, which could result in IFSD and smoke in the cockpit or cabin.

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.

Inspection of the Master Magnetic Chip Detector (MCD) or the No. 1, 2, 3 Bearing Chamber MCD

(f) For engines that have a No. 3 bearing, part number (P/N) 2A1165, installed, do the following:

(1) Within 125 hours time-in-service (TIS) after the effective date of this AD, inspect the master MCD and the No. 1, 2, 3 bearing chamber MCD.

(2) Thereafter, within 125 hours time-since-last inspection, inspect the master MCD and the No. 1, 2, 3 bearing chamber MCD.

(3) If you find bearing material on the master MCD or No. 1, 2, 3 bearing chamber MCD, replace the engine before further flight.

Replacement of No. 3 Bearing

(g) For engines that have a SN from V10600 through V11250 inclusive with No. 3 bearing, P/N 2A1165, installed, replace the No. 3 bearing at the next shop visit for any reason.

(h) After the effective date of this AD, do not install any No. 3 bearing, P/N 2A1165, removed in paragraph (g) of this AD, into any engine.

Replacement or Rework of High-Pressure Compressor (HPC) Stubshaft

(i) For engines that have a SN from V10600 through V11250 inclusive, replace the HPC stubshaft with an HPC stubshaft that has a high-energy plasma coating or rework the HPC stubshaft to a high-energy plasma coating at the next shop visit for any reason.

Terminating Action

(j) Performing the requirements specified in paragraphs (g) and (i) of this AD is terminating action to the repetitive MCD inspections specified in paragraph (f)(1) through (f)(3) of this AD.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(l) None.

Related Information

(m) You can find information on inspecting the master MCD and the No. 1, 2, 3 bearing chamber MCD in section 79–00–00–601 of the Aircraft Maintenance Manual. You can find information on replacing the No. 3 bearing and replacing or recoating the HPC stubshaft in IAE Service Bulletin No. V2500–ENG–72–0459, dated June 27, 2003.

Issued in Burlington, Massachusetts, on September 11, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–23674 Filed 9–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 764 and 766

[Docket No. 030909226–3226–01]

RIN 0694–AC92

Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations by incorporating guidance on how BIS makes penalty determinations when settling administrative enforcement cases under part 766 of the Export Administration Regulations (EAR), 15 CFR 730–799 (2003). This guidance also addresses related aspects of how BIS responds to violations of the EAR, such as charging decisions. This rule also proposes to amend parts 764 and 766 of the EAR to conform to this guidance.

DATES: Comments must be received by November 17, 2003.

ADDRESSES: Written comments should be addressed to: Chief Counsel for Industry and Security, Attention: Philip D. Golrick, Room H–3839, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Please mark envelopes containing comments with the words ''Settlement Guidance.''

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposed rule, contact Philip D. Golrick, Office of Chief Counsel for Industry and Security, United States Department of Commerce, at (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

As an essential part of its administration of the export control system, BIS brings administrative enforcement actions for violations of the Export Administration Regulations (EAR). Many administrative enforcement cases are resolved through settlements between BIS and the respondent.

The rule proposes to incorporate guidance in the EAR on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case. This guidance would appear in a new Supplement No. 1 to part 766 of the EAR. The proposed guidance identifies both general factors, such as the destination for the export and degree of willfulness involved in violations, and specific mitigating and aggravating factors which BIS typically takes into account in determining an appropriate penalty. The proposed guidance also describes factors that BIS's Office of Export Enforcement (OEE) typically considers in describing whether a violation should be addressed in a warning letter, rather than in an administrative enforcement case. The guidance would not apply to antiboycott matters arising under part 760 of the EAR.

In part 764, the rule proposes to amend section 764.5(e) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case regarding violations reported in a voluntary self-disclosure under section 764.5, and what administrative sanctions to seek in settling such a case.

In part 766, the rule proposes to amend section 766.3(a) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The rule proposes to amend section 766.18 to add a new paragraph (f), stating that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760.

This guidance is consistent with the objectives of section 223 of the Small Business Regulatory Enforcement Fairness Act (Title II, Pub. L. 104–121).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694–0058, and carries an annual burden hour estimate of 800 hours and a cost to the public of approximately $32,000.

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

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a general statement of policy and rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. However, in view of the importance of this proposed rule, which represents the first comprehensive statement of BIS's approach toward these issues, BIS is seeking public comments before the proposed rule takes effect. The period for submission of comments will close November 17, 2003. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

List of Subjects

15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Foreign trade.

For the reasons discussed in the preamble, this proposed rule would amend Parts 764 and 766 of the EAR as follows:

1. The authority citation for 15 CFR part 764 is amended to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 7, 2003 (68 FR 47833, August 11, 2003).

PART 764—[AMENDED]

2. Section 764.5, paragraph (e) is revised to read as follows:

§ 764.5 Voluntary self-disclosure.

* * * * *

(e) *Criteria.* Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

3. The authority citation for 15 CFR part 766 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR., 2001 Comp., p. 783; Notice of August 7, 2003 (68 FR 47833, August 11, 2003).

PART 766—[AMENDED]

4. Section 766.3, paragraph (a) is revised to read as follows:

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, or such other Department of Commerce official as may be designated by the Assistant Secretary of Commerce for Export Enforcement, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BIS. Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under part 764 of the EAR. The charging letter will inform the respondent that failure to answer the charges as provided in § 766.6 of this part will be treated as a default under § 766.7 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative who has a power of attorney to represent the respondent. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. BIS may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

5. Section 766.18 is amended by adding paragraph (f) to read as follows:

§ 766.18 Settlement.

* * * * *

(f) Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under Part 760.

6. Part 766 is amended by adding Supplement No. 1 to read as follows:

Supplement No. 1 to Part 766–Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases

Introduction

This supplement describes how BIS responds to violations of the Export Administration Regulations (EAR), and specifically how BIS makes penalty determinations in the settlement of civil administrative enforcement cases under part 764 of the EAR. This guidance does not apply to enforcement cases for antiboycott violations under part 760 of the EAR.

Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve in each case an appropriate level of penalty and deterrent effect. In settlement negotiations, BIS encourages parties to provide, and will give serious consideration to, information and evidence that parties believe is relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, or to whether they have an affirmative defense to potential charges.

This guidance does not confer any right or impose any obligation regarding what penalties BIS may seek in litigating a case or what posture BIS may take toward settling a case. Parties do not have a right to a settlement offer, or particular settlement terms, from BIS, regardless of settlement postures BIS has taken in other cases.

I. Responding to Violations

The Office of Export Enforcement (OEE), among other responsibilities, investigates possible violations of the Export Administration Act of 1979, as amended, the EAR, or any order, license or authorization issued thereunder. When it appears that such a violation has occurred, OEE investigations may lead to a warning letter or a civil enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution. The type of enforcement action initiated by OEE will depend primarily on the nature of the violation.

A. *Issuing a warning letter:* Warning letters represent OEE's conclusion that an apparent violation has occurred. In the exercise of its discretion, OEE may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will achieve the appropriate enforcement result. A warning letter will fully explain the apparent violation and urge compliance. OEE often issues warning letters to first-time offenders for an apparent violation based on technicalities; where good faith efforts to comply with the law and cooperate with the investigation are present; where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of §764.5; and where no aggravating factors exist. A warning letter does not constitute a final agency determination that a violation has occurred.

B. *Pursuing an administrative enforcement case:* The issuance of a charging letter under §766.3 initiates an administrative enforcement proceeding. Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. *See* § 766.18. BIS prepares a proposed charging letter when a case is settled before issuance of an actual charging letter. *See* § 766.18(a). In some cases, BIS also sends a proposed charging letter to a party in the absence of a settlement agreement, thereby informing the party of the violations that BIS has reason to believe occurred and how BIS expects that those violations would be charged.

C. *Referring for criminal prosecution:* In appropriate cases, BIS may refer a case to the Department of Justice for criminal prosecution, in addition to pursuing an administrative enforcement action.

II. Types of Administrative Sanctions

There are three types of administrative sanctions under section 764.3(a) of the EAR: a civil penalty, a denial of export privileges, and an exclusion from practice before BIS. Administrative enforcement cases are generally settled on terms that include one or more of these sanctions.

A. *Civil penalty:* A monetary penalty may be assessed for each violation. The maximum amount of such a penalty per violation is stated in section 764.3(a)(1), subject to adjustments under the Federal Civil Penalties

Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4.

B. *Denial of export privileges:* An order denying a party's export privileges may be issued, as described in § 764.3(a)(2). Such a denial may extend to all export privileges, as set out in the standard terms for denial orders in Supplement No. 1 to part 764, or may be narrower in scope (*e.g.*, limited to exports of specified items or to specified destinations or customers).

C. *Exclusion from practice:* Under § 764.3(a)(3), any person acting as an attorney, accountant, consultant, freight forwarder or other person who acts in a representative capacity in any matter before BIS may be excluded from practicing before BIS.

III. How BIS Determines What Sanctions Are Appropriate in a Settlement

A. *General Factors:* BIS usually looks to the following basic factors in determining what administrative sanctions are appropriate in each settlement:

Degree of Willfulness: Many violations involve no more than simple negligence or carelessness. In most such cases, BIS typically will seek a settlement for payment of a civil penalty (unless the matter is resolved with a warning letter). In cases involving gross negligence, willful blindness to the requirements of the EAR, or knowing or willful violations, BIS is more likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. While some violations of the EAR have a degree of knowledge or intent as an element of the offense, *see, e.g.*, § 764.2(e) (acting with knowledge of a violation) and § 764.2(f) (possession with intent to export illegally), BIS may regard a violation of any provision of the EAR as knowing or willful if the facts and circumstances of the case support that conclusion. In deciding whether a knowing violation has occurred, BIS will consider, in accordance with Supplement No. 3 to part 732, the presence of any red flags and the nature and result of any inquiry made by the party. A denial or exclusion order may also be considered even in matters involving simple negligence or carelessness, particularly if the violations(s) involved harm to national security or other essential interests protected by the export control system, if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty or if the nature and extent of the violation(s) indicate that a denial or exclusion order is necessary to prevent future violations of the EAR.

Destination Involved: BIS is more likely to seek a greater monetary penalty and/or denial of export privileges or exclusion from practice in cases involving:

(1) Exports or reexports to countries subject to anti-terrorism controls, as described at §742.1(d).

(2) Exports or reexports to destinations particularly implicated by the type of control that applies to the item in question—for example, export of items subject to nuclear controls to a country with a poor record of nuclear non-proliferation.

Violations involving exports or reexports to other destinations may also warrant consideration of such sanctions, depending on factors such as the degree of willfulness involved, the nature and extent of harm to national security or other essential interests protected by the export control system, and what level of sanctions are determined to be necessary to deter or prevent future violations of the EAR.

Related Violations: Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who mis-classifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and submit a Shipper's Export Declaration (SED) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation ''NLR'' (no license required). In so doing, the exporter committed three violations: one violation of §764.2(a) for the unauthorized export and two violations of §764.2(g) for the two false statements on the SED. It is within the discretion of BIS to charge three separate violations and settle the case for a penalty that is less than would be appropriate for three unrelated violations under otherwise similar circumstances, or to charge fewer than three violations and pursue settlement in accordance with that charging decision. In exercising such discretion, BIS typically looks to factors such as whether the violations resulted from knowing or willful conduct, willful blindness to the requirements of the EAR, or gross negligence; whether they stemmed from the same underlying error or omission; and whether they resulted in distinguishable or separate harm.

Multiple Unrelated Violations: In cases involving multiple unrelated violations, BIS is more likely to seek a denial of export privileges, an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. For example, repeated unauthorized exports could warrant a denial order, even if a single export of the same item to the same destination under similar circumstances might warrant just a monetary penalty. BIS takes this approach because multiple violations may indicate serious compliance problems and a resulting risk of future violations. BIS may consider whether a party has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial or exclusion order in a particular case.

Timing of Settlement: Under §766.18, settlement can occur before a charging letter is served, while a case is before an administrative law judge, or while a case is before the Under Secretary for Industry and Security under §766.22. However, early settlement—for example, before a charging letter has been served—has the benefit of freeing resources for BIS to deploy in other matters. In contrast, for example, the BIS resources saved by settlement on the eve of an adversary hearing under §766.13 are fewer, insofar as BIS has already expended significant resources on discovery, motions practice, and trial preparation. Because the effective implementation of the U.S. export control system depends on the efficient use of BIS resources, BIS has an interest in encouraging early settlement and may take this interest into account in determining settlement terms.

Related Criminal or Civil Violations: Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, BIS may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766. A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective administrative sanctions. However, entry of a guilty plea can be a sign that a party accepts responsibility for complying with the EAR and will take greater care to do so in the future. In appropriate cases where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear otherwise to be similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a ''global settlement'' of both civil and criminal cases, or multiple civil cases, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

B. *Specific Mitigating and Aggravating Factors:* In addition to the general factors described above, BIS also generally looks to the presence or absence of the following mitigating and aggravating factors in determining what sanctions should apply in a given settlement. Where a factor admits of degrees, it should accordingly be given more or less weight. Thus, for example, one prior violation should be given less weight than a history of multiple violations, and a previous violation reported in a voluntary self disclosure by an exporter whose overall export compliance efforts are of high quality should be given less weight than previous violation(s) not involving such mitigating factors.

Some of the factors listed below are designated as having ''great weight.'' When present, such a factor should ordinarily be given considerably more weight than a factor that is not so designated.

Mitigating Factors

1. The party made a voluntary self-disclosure of the violation, satisfying the requirements of §764.5. (GREAT WEIGHT)

2. The party has an effective export compliance program and its overall export compliance efforts have been of high quality. In determining the presence of this factor, BIS will take account of the extent to which a party complies with the principles set forth in BIS's Export Management System (EMS) Guidelines. Information about the EMS Guidelines can be accessed through the BIS Web site at *http://www.bis.doc.gov.* In this context, BIS will also consider whether a party's export compliance program

uncovered a problem, thereby preventing further violations. (GREAT WEIGHT)

3. The violation was an isolated occurrence or the result of a good-faith misinterpretation.

4. Based on the facts of a case and under the applicable licensing policy, required authorization for the export transaction in question would likely have been granted upon request.

5. Other than with respect to antiboycott matters under part 760:

a. The party has never been convicted of an export-related criminal violation;

b. In the past five years, the party has not entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

c. In the past three years, the party has not received a warning letter from BIS; and

d. In the past five years, the party has not otherwise violated the EAR.

Where necessary to effective enforcement, the prior involvement in export violations of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied.

6. The party has cooperated to an exceptional degree with BIS efforts to investigate the party's conduct.

7. The party has provided substantial assistance in BIS investigation of another person who may have violated the EAR.

8. The violation was not likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) were intended to protect against; for example, a false statement on an SED that an export was ''NLR,'' when in fact a license requirement was applicable, but a license exception was available.

9. At the time of the violation, the party: (1) Had little or no previous export experience; and (2) was not familiar with export practices and requirements. (Note: The presence of only one of these elements will not generally be considered a mitigating factor.)

Aggravating Factors

1. The party made a deliberate effort to hide or conceal the violation(s). (GREAT WEIGHT)

2. The party's conduct demonstrated a serious disregard for export compliance responsibilities. (GREAT WEIGHT)

3. The violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in question. This factor would be present where the conduct in question, in purpose or effect, substantially implicated national security or other essential interests protected by the U.S. export control system, in view of such factors as the destination and sensitivity of the items involved. Such conduct might include, for example, violations of controls based on nuclear, biological, and chemical weapon proliferation, missile technology proliferation, and national security concerns, and exports proscribed in part 744. (GREAT WEIGHT)

4. The violation was likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.*, a license condition) are principally intended to protect against, *e.g.*, a false statement on an SED that an export was destined for a non-embargoed country, when in fact it was destined for an embargoed country.

5. The quantity and/or value of the exports was high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value.

6. The presence in the same transaction of concurrent violations of laws and regulations, other than those enforced by BIS.

7. Other than with respect to antiboycott matters under part 760:

a. The party has been convicted of an export-related criminal violation;

b. In the past five years, the party has entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or has been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

c. In the past three years, the party has received a warning letter from BIS; or

d. In the past five years, the party otherwise violated the EAR. Where necessary to effective enforcement, the prior involvement in export violations of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied.

8. The party exports as a regular part of the party's business, but lacked a systematic export compliance effort.

In deciding whether and what scope of denial or exclusion order is appropriate, the following factors are particularly relevant: the presence of mitigating or aggravating factors of great weight; the degree of willfulness involved; in a business context, the extent to which senior management participated in or was aware of the conduct in question; the number of violations; the existence and seriousness of prior violations; the likelihood of future violations (taking into account relevant export compliance efforts); and whether a monetary penalty can be expected to have a sufficient deterrent effect.

IV. How BIS Makes Suspension and Deferral Decisions

A. *Civil Penalties:* In appropriate cases, payment of a civil monetary penalty may be deferred or suspended. *See* §764.3(a)(iii). In determining whether suspension or deferral is appropriate, BIS may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of BIS penalties on other parties who committed similar violations.

B. *Denial of Export Privileges and Exclusion from Practice:* In deciding whether a denial or exclusion order should be suspended, BIS may consider, for example, the adverse economic consequences of the order on the respondent, its employees, and other parties, as well as on the national interest in the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future export control violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

Dated: September 9, 2003.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 03–23499 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35 and 40

[Docket ID No. OA–2002–0001; FRL–7560–7]

RIN 2020–AA39

Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces the dates and locations of public hearings wherein EPA will take comments on its proposed rule for ''Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements,'' published on July 24, 2003 at 68 FR 43824. These public hearings will be held during the 180-day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional public hearings during the comment period when that information becomes available.

EPA also will hold meetings with Tribal officials/representatives during the 180-day public comment period. EPA will publish information concerning such Tribal hearings when that information becomes available.

DATES: See **SUPPLEMENTARY INFORMATION** for hearing dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for addresses.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor, at (202) 564–5951, Kimberly Patrick, Attorney Advisor, at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Participation by Disadvantage Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003 at 68 FR 43824.

EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information is (202) 566–1752. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' and then key in docket identification number OA–2002–0001.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

Dates: The public hearings addressed by this **Federal Register** Proposal are scheduled as follows:

1. September 23, 2003, 9 a.m. to 5 p.m., Philadelphia, Pennsylvania.
2. September 24, 2003, 9 a.m. to 5 p.m., Boston, Massachusetts.
3. October 22, 2003, 9 a.m. to 5 p.m., Atlanta, Georgia.
4. November 13, 2003, 9 a.m. to 5 p.m., Seattle, Washington.
5. November 18, 2003, 9 a.m. to 5 p.m., Dallas, Texas.
6. January 13, 2004, 9 a.m. to 5 p.m., Chicago, Illinois.
7. January 20, 2004, 9 a.m. to 5 p.m., San Francisco, California.

Addresses: The hearings will be held at the following locations:

1. Department of Housing and Urban Development, Wanamaker Building, Training Center Rooms 10A/B, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3380.
2. Faneuil Hall, 1 Faneuil Hall Square, Boston, Massachusetts 02109.
3. Sam Nunn Atlanta Federal Center, 2nd Floor, Conference Rooms B & C, 61 Forsyth Street, Atlanta, Georgia 30303–8960.
4. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, Washington 98101.
5. 1445 Ross Avenue, 12th Floor Conference Room, Dallas, Texas 75202–2733.
6. Metcalfe Federal Building, Room 331, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.
7. First Floor Conference Room, 75 Hawthorne Street, San Francisco, California 94105.

Dated: September 12, 2003.

Thomas J. Gibson,

Chief of Staff.

[FR Doc. 03–23753 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 106–200336(b); FRL–7558–8]

Approval and Promulgation of Implementation Plans North Carolina: Miscellaneous Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of North Carolina on April 4, 2003, for the purpose of establishing revisions to Volatile Organic Compounds and other miscellaneous revisions. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 17, 2003.

ADDRESSES: Comments may be submitted by mail to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections I.B.1.i. through iii. of the **SUPPLEMENTARY INFORMATION** section which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. De La Torre Colón can also be reached via electronic mail at *delatorre.rosymar@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–23581 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 195–1195; FRL–7560–1]

Approval and Promulgation of Implementation Plan and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revision submitted by the state of Missouri on May 12, 2003. These revisions, which became effective on April 30, 2003, correct all deficiencies described in the March 25, 2002, **Federal Register** Notice

of Deficiency. Approval of these revisions will ensure consistency between the state and Federally approved rules and remove the potential imposition of sanctions on Missouri's permitting program.

DATES: Comments on this proposed action must be received in writing by October 17, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Harriett Jones at *jones.harriett@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harriett Jones at (913) 551–7730, or by e-mail at *jones.harriett@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP and operating plan revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 4, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–23587 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[No. R803CISWI; FRL–7560–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Control of Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the commercial and industrial solid waste incinerator 111(d)/129 plan (the ''plan'') submitted by North Dakota's Department of Health on May 1, 2003. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999. EPA is also proposing to approve negative declarations submitted by Colorado's Department of Public Health and Environment on May 6, 2002; Montana's Department of Environmental Quality on January 28, 2002; South Dakota's Department of Environment and Natural Resources on February 28, 2002; Utah's Department of Environmental Quality on April 23, 2002; Wyoming's Department of Environmental Quality on December 16, 2002.

DATES: Written comments must be received in writing on or before October 17, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the Supplementary Information section) described in the direct final rule which is located in the Rules Section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays, at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the documents relevant to each respective State action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530; Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620; North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506; South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501; Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114; and Wyoming Department of Environmental Quality, Air Quality Division, 122 W. 25th Street, Cheyenne, WY 82002.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 303–312–6526, *paser.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: September 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–23750 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[No. R803NDT5REV; FRL–7560–4]

Clean Air Act Approval of Revisions to the Operating Permits Program in North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as a revision to North Dakota's title V air operating permits program, a proposed amendment to North Dakota's definition of ''major source'' in response to recent amendments to the definition of ''major source'' in the operating permit regulations.

DATES: Written comments must be received in writing on or before October 17, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection Monday through Friday, 8 a.m. to 4 p.m., excluding federal Holidays, at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are also available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 303–312–6526, *paser.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: September 3, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–23752 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2763, MB Docket No. 03–193, RM–10768]

Digital Television Broadcast Service; Hobbs, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Eastern New Mexico University requesting the allotment of DTV channel *47 to Hobbs, New Mexico, as the community's second local DTV service. DTV Channel *47 can be allotted to Hobbs in compliance with the minimum geographic spacing requirements of § 73.623(d) and the principle community coverage requirements of § 73.625(a) at reference coordinates 323–45–20 N. and 103–11–09 W.

DATES: Comments must be filed on or before October 27 , 2003, and reply comments on or before November 12, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036 (Counsel for Eastern New Mexico University).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–193, adopted August 28, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico, is amended by adding DTV channel *47 at Hobbs.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–23631 Filed 9–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AT49

Review of Information Concerning Bighead Carp (*Hypophthalmichthys nobilis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Fish and Wildlife Service is reviewing available economic and biological information on bighead carp (*Hypophthalmichthys nobilis*) for possible addition of that species to the list of injurious wildlife under the Lacey Act. The importation and introduction of bighead carp into the natural ecosystems of the United States may pose a threat to agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. Listing bighead carp as injurious would prohibit their importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States, with limited exceptions. This notice seeks comments from the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before November 17, 2003.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; fax (703) 358–1800. You may send comments by electronic mail (e-mail) to: *BigheadCarp@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov*.

SUPPLEMENTARY INFORMATION: On October 16, 2002, the U.S. Fish and Wildlife Service received a petition requesting that bighead carp, black carp, and silver carp be considered for inclusion in the injurious wildlife regulations pursuant to the Lacey Act. The petitioners expressed concern that bighead carp could invade the Great Lakes from the Mississippi River basin, where they are established, through a manmade ship and sanitary canal. The petitioners, 25 members of Congress representing the Great Lakes region, are concerned that bighead carp, because they are voracious eaters, may impact food supplies available to native fisheries in the Great Lakes, which are already struggling against other invasive species. The petitioners also noted that the Great Lakes fisheries are valued at approximately $4 billion, and resource managers have spent decades trying to restore and protect them.

Bighead carp are native to southern and central China. They feed on plankton and prefer large river habitats. They can grow to maximum lengths of about 58 inches and reach sexual maturity at about 21.6 inches. In Asia, bighead carp typically spawn between April and June, and they often migrate upstream to spawn.

Bighead carp were imported into the United States in 1972 by a fish farmer who wanted to use them in combination with other phytoplankton-eating fish to improve water quality and increase fish production in culture ponds (Fuller, et al, 1999). They have been used in many parts of the world as food fish. Bighead carp have been recorded from within or along the borders of at least 18 States.

The Lacey Act (18 U.S.C. 42) and its implementing regulations in 50 CFR part 16 restrict the importation into or the transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any species of wildlife, or eggs thereof, determined to be injurious or potentially injurious to certain interests, including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes in accordance with permit regulations at 50 CFR 16.22, or by Federal agencies without a permit solely for their own use. If the process initiated by this notice results in the addition of bighead carp to the list of injurious wildlife contained in 50 CFR part 16, their importation into the United States would be prohibited except under the conditions, and for the purposes, described above.

This notice solicits economic, biological, or other information concerning bighead carp. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious wildlife in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand-delivered to the above address or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AT49]'' and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This notice is issued under the authority of the Lacey Act (18 U.S.C. 42).

Dated: September 10, 2003.

Craig Manson,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 03–23745 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030908222–3222–01; I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species (HMS); Recreational Atlantic Blue and White Marlin Landings Limit; Clarification of Recreational HMS Reporting Requirements

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

ACTION: Proposed rule; request for comments; public hearings.

SUMMARY: NMFS proposes this rule to amend the regulations governing Atlantic HMS recreational fisheries in order to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), and to achieve consistent recreational reporting requirements for Atlantic highly migratory species. This rule proposes to: establish an annual domestic landing limit of 250 Atlantic blue and white marlin, combined; establish procedures to carry forward overages and underages of the marlin landings limit to subsequent years; implement management measures to ensure that the annual domestic Atlantic marlin landing limit is not exceeded; and, clarify regulations by specifying that the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category is required to report recreational landings of Atlantic bluefin tuna, billfish, and swordfish. The purpose of these proposed actions is to comply with ICCAT recommendations, improve upon the management and conservation of Atlantic HMS, and establish consistent HMS recreational reporting requirements to facilitate enforcement.

DATES: Written comments on the proposed rule must be received by 5 p.m. E.S.T. on October 24, 2003. NMFS will hold public hearings from October 1, 2003, through October 15, 2003.

ADDRESSES: Comments on the proposed rule may be submitted by mail to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to 301–713–1917. Please mark the outside of the envelope ''Comments on Proposed Recreational Billfish Rule.'' Comments will not be accepted via e-mail or via the internet.

Copies of the Draft Environmental Assessment/Regulatory Impact Review (EA/RIR) for this proposed rule may be obtained from the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. The EA/RIR is also available on the HMS Management Division website at *www.nmfs.noaa.gov/sfa/hmspg.html*.

FOR FURTHER INFORMATION CONTACT: Russell Dunn or Richard A. Pearson at 727–570–5447.

SUPPLEMENTARY INFORMATION: Atlantic billfish (including blue marlin, white marlin, sailfish, and spearfish) are managed under Amendment One to the Atlantic Billfish Fishery Management Plan (Atlantic Billfish FMP). North Atlantic tunas, swordfish and sharks are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 635. In addition, billfish, swordfish, and tunas are managed internationally by the International Commission for the Conservation of Atlantic Tunas (ICCAT), to which the United States is a contracting party. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to promulgate regulations as necessary and appropriate to implement ICCAT recommendations.

Atlantic Blue and White Marlin Stock Status and Management History

The most recent stock assessment for Atlantic blue marlin, conducted in 2000 by ICCAT's Standing Committee for Research and Statistics (SCRS), indicated that total Atlantic blue marlin stock abundance is at approximately 40 percent of the biomass needed to support maximum sustainable yield (B_{msy}), and that the current fishing mortality rate is approximately four times higher than that which would allow achievement of the maximum sustainable yield (F_{msy}). The SCRS recommended that ICCAT take additional steps to reduce the catch of blue marlin as much as possible.

The SCRS conducted a stock assessment for white marlin in 2002. The 2002 assessment concluded that white marlin are overfished and that overfishing continues to occur. Relative white marlin biomass (B_{2001}/B_{msy}) is approximately 0.12 and relative fishing mortality (F_{2000}/F_{msy}) is approximately 8.28.

At its November, 2000 meeting, ICCAT developed a two-phased rebuilding plan for Atlantic blue and white marlin (ICCAT Recommendation 00–13). Phase One of the Atlantic marlin rebuilding plan required that countries capturing marlin in commercial fisheries reduce Atlantic blue marlin landings by 50 percent and white marlin landings by 67 percent from 1999 levels. As part of the rebuilding program, the United States agreed to limit annual landings by U.S. recreational fishermen to 250 Atlantic blue and white marlin, combined, for 2001 and 2002, and to maintain regulations that have prohibited the retention of marlins by U.S. pelagic longline fishermen since implementation of the 1988 Atlantic Billfish FMP.

In 2002, ICCAT amended Phase One of the Atlantic marlin plan by extending the rebuilding plan through 2005 (ICCAT Recommendation 02–13). ICCAT also specified that, through 2005 (Phase One), the annual amount of blue marlin that can be harvested and retained by foreign pelagic longline and purse seine vessels must be no more than 50 percent of the 1996 or 1999 landing levels, whichever is greater. For white marlin, the annual amount that can be harvested and retained by foreign pelagic longline and purse seine vessels must be no more than 33 percent of the 1996 or 1999 landing levels, whichever is greater. ICCAT recommended that all blue and white marlin brought to pelagic longline and purse seine vessels alive be released in a manner that maximizes their survival. These provisions do not apply to marlin that are dead when brought alongside the vessel and that are not sold or entered into commerce.

The SCRS intends to conduct new stock assessments for Atlantic blue and white marlin in 2005 and to evaluate stock recovery options, taking into account the new stock assessments, any new information, and any reevaluation of historical catch and effort data. Based upon the SCRS assessment and evaluation, ICCAT will develop and adopt additional programs in 2005 to rebuild Atlantic marlin stocks to B_{msy}, if necessary.

Recent U.S. Recreational Atlantic Marlin Fishery Management Actions

To facilitate compliance with Phase I of the ICCAT billfish rebuilding plan, NMFS implemented regulations, which became effective in March 2003, requiring: (1) an Atlantic HMS recreational Angling category permit (December 18, 2002; 67 FR 77434); and, (2) mandatory self-reporting of all non-

tournament recreational landings of Atlantic marlins, sailfish, and swordfish (January 7, 2003; 68 FR 711). These new requirements, in conjunction with existing mandatory billfish tournament registration and tournament reporting through the Recreational Billfish Survey (RBS), will enable the United States to monitor more accurately recreational landings of Atlantic marlins, sailfish, and swordfish. They are expected to provide essential information to help gauge billfish fishing effort, recreational landings, and U.S. compliance with ICCAT Recommendations 00–13 and 02–13.

Proposed Atlantic Blue and White Marlin 250–Fish Landing Limit

The primary issue for the United States resulting from ICCAT Recommendation 00–13 is to determine an appropriate management strategy to ensure compliance with an annual limit of 250 Atlantic blue and white marlin, combined, through 2005. In addition, it is necessary to develop a methodology to implement ICCAT Recommendation 00–14 which specified that, for any species under catch limit management, underages/overages from one year may be added to/must be subtracted from the catch limit of the management period immediately after or one year after that year, unless any other recommendation dealing with overages/underages takes precedence. These ICCAT recommendations have not yet been codified by the United States. Therefore, this rule proposes to establish a 250–fish annual Atlantic marlin landing limit with a carryover provision for landings above/below the limit (beginning with overages or underages from the 2003 fishing year and adjustments made in the 2004 fishing year), and to implement regulations that will ensure compliance with the annual landing limit.

In the EA/RIR for this proposed rule, NMFS analyzed five alternatives to implement a 250–fish annual marlin landing limit, and to ensure compliance with the limit. They were selected to provide a maximum range of alternatives. The alternatives included: (1) a no-action alternative (*i.e.*, status quo); (2) a year-round catch and release marlin fishery; (3) a catch and release fishery upon achieving the landing limit for the remainder of the fishing year (through May 31); (4) an increase in Atlantic blue and white marlin minimum fish sizes, if necessary, upon landing 80 percent of the limit (which would be effective for the remainder of the fishing year), and with a backstop catch and release only fishery if 100 percent of the annual limit is achieved ; and, (5) a mandatory landings tag program whereby 250 tags would be issued, and only tagged fish could be landed. Under each alternative, the carryover provision would apply, meaning that landings above the limit in a given fishing year (beginning in 2003) would be deducted from the limit in a subsequent fishing year (beginning in 2004), and underages of the limit from a given fishing year (beginning in 2003) could be added to the limit in a subsequent fishing year (beginning in 2004).

To ensure compliance with the ICCAT recommendations and to minimize any adverse economic impacts on U.S. charter/headboat operators and other recreational fishers, NMFS is proposing to implement the alternative that would increase Atlantic marlin minimum fish sizes for the remainder of the fishing year, if necessary, when 80 percent of the limit is landed, or projected to be landed. Specifically, the proposed measures would maintain existing regulations until 80 percent of landing limit is projected to be landed. At that point, Atlantic blue and white marlin minimum fish sizes would be increased for the remainder of the fishing year, if necessary, to an appropriate length whereby the landing limit would be achieved, but not exceeded. If the landing limit is not projected to be achieved by the close of the fishing year, then minimum fish sizes may not need to be increased. As a preventive backstop, if the minimum size increase fails to keep landings below the 250–fish limit, the marlin fishery would become catch and release from the date the 250–fish limit is achieved until the end of the fishing year. Because Atlantic marlin occur predominantly in Federal waters, this proposed rule includes a rebuttable presumption that any Atlantic marlin landed were taken seaward of the inner boundary of the U.S. Atlantic Exclusive Economic Zone (EEZ).

NMFS believes that the proposed measures have the highest probability of keeping within the landing limit, while still allowing marlin landings for the entire duration of the fishing year. This is especially important for areas where fishing activity, including tournaments, occurs later in the fishing year. While those areas could be adversely impacted by increased minimum sizes, the impacts are expected to be less severe than a total prohibition on landings. It is important to emphasize that, based upon the RBS (which monitors tournament landings), the United States has been below the proposed landing limit for the past several fishing years. Although the magnitude of non-tournament landings is currently unknown, it is very possible that the overall annual 250–fish landing limit will not be achieved. If that is the case, NMFS has the option, under the proposed measures, to take no action when 80 percent of landing limit is achieved, if projections indicate that 100 percent of the limit will not be reached before the end of the fishing year. Any minimum size increase would filed with the Office of the **Federal Register** at least 14 days prior to the effective date of any adjustment. NMFS will notify constituents of the adjustment through contact with HMS AP members, recreational fishing publications, and through the use of the HMS fax network and HMS internet website.

Clarification of HMS Recreational Reporting Requirements

This rule also proposes to clarify, for enforcement purposes, a recreational reporting requirement for billfish, and swordfish that was originally specified in a January 7, 2003, (68 FR 711) final rule. Inadvertently, some HMS regulations currently indicate that anglers are required to call in recreational landings, using a NMFS toll-free number, while other regulations, primarily for bluefin tuna, indicate that vessel owners are required to report. The regulatory language at § 635.5(c)(2), § 635.71(c)(6), and § 635.71(e)(15), for example, indicates that anglers are required to report all non-tournament landings of billfish and swordfish to NMFS. Also, § 635.71(b)(6) indicates that anglers are required to report landings of bluefin tuna. However, § 635.5(c)(1) indicates that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report bluefin tuna landings that are under the Angling category quota designated at § 635.27(a).

This proposed rule would specify that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report landings of bluefin tuna under the Angling category, and that owners of vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament recreational landings of billfish and swordfish. Permits under the Atlantic HMS Angling category and the Atlantic HMS Charter/Headboat category are issued to vessel owners. Therefore, the requirement to report landings should logically, and for enforcement purposes, be similarly incumbent upon owners of

vessels permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category.

Meeting Locations, Dates, and Times

1. Wednesday, October 1, 2003–Destin, FL, 7–9 p.m.
   Destin Community Center
   101 Stahlman Avenue
   Destin, FL 32541
2. Tuesday, October 7, 2003–Kill Devil Hills, NC, 7–9 p.m.
   Ramada Inn/Outer Banks Resort and Conference Center
   1701 Virginia Dare Trail
   Kill Devil Hills, NC 27948
3. Wednesday, October 8, 2003–Ocean City, MD, 7–9 p.m.
   Ocean City Council Chambers
   301 Baltimore Avenue
   Ocean City, MD 21842
4. Tuesday, October 14, 2003–Miami, FL, 7–9 p.m.
   University of Miami
   Rosenstiel School of Marine and Atmospheric Sciences
   4600 Rickenbacker Causeway
   Science and Administrative Building, Room 103
   Miami, FL 33149
5. Thursday, October 16, 2003–Ponce, Puerto Rico 7–9 p.m.
   Ponce Holiday Inn
   3315 Ponce By Pass,
   Ponce, PR 00728

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for the management of Atlantic HMS fisheries.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule that discusses the impact on the environment of this rule. The AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule was implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the other alternatives considered. A copy of the draft EA is available from NMFS (see **ADDRESSES**).

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the purpose and need for the action, and the legal basis for the action are contained in the preamble to this proposed rule and in the **SUMMARY** section. A summary of the analysis follows:

Codification of a 250–fish annual Atlantic marlin landing limit and implementation of compliance measures are precautionary steps that are being proposed to comply with ICCAT Recommendations and to enhance conservation. At present, NMFS believes that the proposed 250–fish landing limit is not likely to be exceeded. This is based upon RBS data (primarily tournament landings) indicating that 191, 127, 97, and 129 Atlantic marlin were landed during the 1999, 2000, 2001, and 2002 (2002 preliminary data) fishing years, respectively. Therefore, adverse economic impacts are not expected under any of the alternatives, except for the year-round catch and release alternative. Although the landing limit is not presently expected to be exceeded, it is possible for documented landings to increase in the future because the recreational marlin fishery is an open access fishery (*i.e.*, no limits on entry) and because new recreational HMS reporting requirements have recently been implemented.

There are several unknowns that make an assessment of economic impacts difficult to quantify. These include the absence of a reliable estimate of total tournament and non-tournament marlin landings, uncertainty regarding the number of marlin fishermen, and uncertainty regarding angler behavior in a catch and release only Atlantic marlin fishery. Nevertheless, as described below, the preferred alternative that is being proposed is expected to have the least adverse economic impact on small entities, while simultaneously achieving the objectives of the Magnuson-Stevens Act, ATCA, and relevant ICCAT recommendations.

The total population of recreational billfish anglers has not been quantified. This is because not all vessels possessing HMS Angling category and HMS Charter/headboat permits participate in the recreational billfish fishery. Many fish primarily for tuna. For purposes of analysis, this document assumed that approximately 10,000 vessels, all of which are considered small entities, could be affected by the proposed Atlantic marlin actions.

In order to compare the relative economic impact of the proposed alternatives, several assumptions were necessary. These assumptions are described in detail in the EA/RIR prepared pursuant to this proposed rule (see **ADDRESSES**) and not repeated here. Also, because NMFS has no data predicting angler behavior under a catch and release scenario, the assumptions were inferred using data on current and past behavior and, in general, present worst case scenarios.

As described earlier, for the 250–fish landing limit NMFS analyzed five alternatives, including the no-action alternative.

The preferred alternative (Alternative 1d) would increase marlin minimum fish sizes when 80 percent of the landing limit is projected to be achieved, if deemed necessary. Under a worst case scenario that the 80 percent trigger would be met roughly estimated around October 15, this alternative could potentially result in a reduction of between 6 and 145 charter trips, in aggregate, assuming that charterboats would cease fishing for marlin when the minimum size increased. This would equate to an annual industry wide gross revenue loss of between $4,050 to $97,875. NMFS does not anticipate that any tournaments would cease operations, because no marlin-only tournaments are known to occur during the projected time period for any size increase (October 15 to May 31). Furthermore, many tournaments that include marlin as an award species already specify a tournament minimum size that is greater than the current legal minimum size of 99 inches (251.5 cm). If 250 marlin are landed, even with the increased size limit, then any negative economic impacts would be greater because landings would then have to be prohibited. This alternative is intended to allow some level of landings for the entire duration of the fishing season, without having to resort to a prohibition on landings (*i.e.*, catch and release). Thus, it is expected to minimize adverse economic impacts, yet be consistent with ICCAT recommendations.

The no-action alternative (1a) would not produce any negative short-term economic impacts, however it is not consistent with the goals and objectives of the FMP and fails to ensure compliance with ICCAT recommendations.

Alternative 1b (year-round catch and release fishery) could potentially result in a reduction of between 104 to 2,696 charter trips, in aggregate, for a total annual lost revenue of between $70,200 and $1.82 million. Potentially, 10 tournaments could cease operations under this alternative, with a resulting total annual gross revenue loss as high as $6 million.

Alternative 1c (catch and release when 250 marlin landed) could potentially result in a reduction of between 2 to 47 charter trips, in aggregate, for a total annual lost revenue of between $1,350 and $31,750. This assumes that the 250 marlin limit is met roughly estimated around May 15 and that charterboats would cease fishing of the fishery became all catch and release. NMFS does not expect that any tournaments would be cancelled, because no marlin-only tournaments are known to occur during the projected time period for any closure (May 15–May 31). However, if landings patterns change from current patterns and result in achievement of the 250 fish limit earlier in the fishing year, then this alternative could create sizeable negative economic impacts on charter vessels and billfish tournaments, particularly in areas where fishing activity occurs later in the fishing year.

Alternative 1e (landings tag program) would be expected to result in a reduction of between 103 and 2,671 charter trips annually with a potential decrease in total gross revenues of between $69,525 to $1,802,925. For tournaments, this alternative could be expected to result in the cancellation of up to 10 tournaments with an economic impact of $6.0 million dollars.

With regards to the proposed recreational reporting requirements, only two alternatives were considered because no other alternatives would meet the stated purpose of clarifying the regulations for enforcement purposes, and making the regulations consistent with other HMS regulations. The no-action alternative would not produce any negative economic impacts. However, the current regulations have created some confusion in the regulated community due to inconsistencies with other HMS recreational reporting requirements which require the vessel owner to report (*i.e.* bluefin tuna landings in the Angling category). Furthermore, because vessel permits are issued to vessel owners, enforcement is compromised under this alternative because permit sanctions cannot be used as a potential compliance mechanism. Alternative 2b (in which vessel owners report) would not produce any negative short-term economic impacts. The toll-free reporting system takes less than 3 to 5 minutes for each no-cost report and an additional 3 to 5 minutes for a confirmation call-back. In addition, this alternative would achieve consistency in recreational HMS reporting requirements and facilitate enforcement. It is possible, under Alternative 2b, that the required number of reports would be reduced, because only one report from a vessel owner would be required for trips that land more than one fish by several different anglers.

This rule does not duplicate, overlap, or conflict with any relevant Federal rules. None of the alternatives considered in this document would result in additional reporting, record keeping, compliance, or monitoring requirements for the public.

The call-in reporting requirement for recreational non-tournament landings was previously approved under OMB 0648–0446.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0446. Public reporting burden for each landing report or confirmation call is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 11, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c)(2) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) * * *

(2) *Billfish and North Atlantic Swordfish*. The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, sailfish, and North Atlantic swordfish, including those landed on a charter/headboat, to NMFS by calling 1–800–894–5528 within 24 hours of the landing. For telephone reports, a contact phone number must be provided so that NMFS can call the vessel owner back for follow up questions and to provide a confirmation of the reported landings. The telephone landing report has not been completed unless the vessel owner has received a confirmation number from a NMFS' designee.

* * * * *

3. In § 635.20, paragraph (d)(4) is added to read as follows:

§ 635.20 Size limits.

* * * * *

(d) * * *

(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted, if necessary, to sizes determined to be appropriate to achieve, but not exceed, the annual Atlantic marlin landing limit, specified in § 635.27(d), when 80 percent of the annual Atlantic marlin landing limit is projected to be harvested, through publication in the **Federal Register**. In no case shall such adjustment be effective less than 14 days after the date of filing with the Office of the **Federal Register** for publication. The adjustment will be in effect through the end of the fishing year (May 31).

* * * * *

4. In § 635.27, paragraph (d) is added to read as follows:

§ 635.27 Quotas.

* * * * *

(d) *Atlantic Blue and White Marlin*. The total annual recreational landings limit for Atlantic blue and white marlin, harvested from the management unit, is 250 fish, combined, during a given fishing year (June 1 to May 31), except as provided in paragraph (d)(1) of this section. It is a rebuttable presumption that any landed Atlantic marlin was taken seaward of the inner boundary or the U.S. Atlantic EEZ. After the landings limit is attained, no landings of Atlantic blue and white marlin are allowed.

(1) If the Assistant Administrator (AA) determines, based upon landings statistics and other available

information, that aggregate landings of Atlantic blue and white marlin are above the annual Atlantic marlin landings limit, as established in paragraph (d) of this section, the AA shall subtract the overharvest from the following fishing year's Atlantic marlin landings limit, beginning with any overharvest from the 2003 fishing year, consistent with ICCAT recommendations. If the AA determines, based on landings statistics and other available information, that aggregate landings of Atlantic blue and white marlin are below the annual Atlantic marlin landings limit, the AA may add the underharvest to the following fishing year's annual Atlantic marlin landings limit, as established in paragraph (d) of this section, beginning with any underharvest from the 2003 fishing year, consistent with ICCAT recommendations,. The AA will publish any adjustment to the Atlantic marlin landing limit made pursuant to this paragraph in the **Federal Register**.

(2) [Reserved]

5. In § 635.28, paragraph (d) is added to read as follows:

§ 635.28 Closures.

* * * * *

(d) *Atlantic Blue and White Marlin*. If the annual Atlantic marlin landings limit specified in § 635.27 (d) is exceeded, or is projected to be exceeded, the AA will establish a closure date based upon the date the landings limit is exceeded, or is projected to be exceeded, and publish an action in the **Federal Register** prohibiting the landings of any Atlantic blue and white marlins from the closure date through the remainder of the fishing year (through May 31). In no case shall such closure be effective less than 14 calendar days after the action is filed with the Office of the **Federal Register**.

6. In § 635.34, paragraph (a) is revised to read as follows:

§ 635.34 Adjustment of Management Measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark, and swordfish, as specified in § 635.27; the combined annual landing limit for Atlantic blue and white marlin, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20(d).

* * * * *

8. In § 635.71, paragraphs (b)(6), (c)(6), and (e)(15) are revised, and paragraph (c)(7) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (3).

* * * * *

(c) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (3).

(7) Retain on board a vessel or land an Atlantic blue or white marlin when the fishery for these species is closed, as specified in § 635.28(d).

* * * * *

(e) * * *

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (3).

[FR Doc. 03–23764 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 180

Wednesday, September 17, 2003

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

DEPARTMENT OF AGRICULTURE

Forest Service

Davis Fire Recovery Project, Deschutes National Forest, Deschutes and Klamath Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to salvage dead and severely damaged trees, utilize small diameter forest products, and plant trees to assist in the restoration of the area burned in the Davis Fire on the Crescent Ranger District of the Deschutes National Forest. The Davis Fire, located about 10 miles west of La Pine, Oregon, burned approximately 21,000 acres, entirely on National Forest System Lands. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by October 15, 2003.

ADDRESSES: Send written comments to Phil Cruz, District Ranger, Crescent Ranger District, P.O. Box 208, Crescent, Oregon 97733.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Environmental Coordinator, P.O. Box 208, Crescent, Oregon, 97733, phone 541 433-3200. E-mail *emickle@fs.fed.us.*

SUPPLEMENTARY INFORMATION: *Purpose and Need.* More than half of the fire occurred within the Davis Late Successional Reserve (LSR) and about 7,700 acres of that was at high or moderate intensity. The Northwest Forest Plan states ''Late Successional Reserves are to be managed to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species * * *'' (C–11). The purpose of entering the fire area within the Davis LSR is to facilitate late-successional habitat recovery.

Following catastrophic fire three management activities can improve habitat recovery. These activities are—(1) *Reforestation and Regeneration*—Natural regeneration of conifer species after a fire is dependent upon seed disperal from healthy trees. In many areas, particularly within the interior areas of the fire, adjacent seed sources are no longer available. In order to expedite recovery,these areas may require reforestation by planting. Ponderosa pine and Douglas-fir are the main species desired within most of the project area. Replanting with the appropriate species will ensure timely establishment of species desirable for long-term objectives. The lodgepole pine flat area south of Davis Lake would see natural regeneration over time, but there is a need to accelerate the rate of reforestation. (2) *Fuel Levels and Fire Risk*—Lowering fuel loadings to a level that reduces the likelihood of stand-replacement fire in regenerated stands, particularly during the early stages of stand development, would promote the long-term survival and growth of new conifers. The impacts to soils from another fire could be severe with the current amount of dead wood that would become surface fuel. A fire in heavy surface fuels could increase the duration of elevated temperatures during a fire event to levels capable of altering soil properties and affecting site productivity. (3) *Management of Newly Established Forest*—Many forested stands within the fire area were overly dense where they had not been recently managed. It is predicted most of the dead trees will fall by the time regenerated stands are ready to be thinned. Removing the dead trees now would facilitate active management within new stands, accelerating growth and vigor of the trees.

The remainder of the fire (approximately 9,000 acres or 45%) occurred in Matrix or Administratively Withdrawn allocations, or was outside the Northwest Forest Plan area. Fire intensity was categorized as high or moderate over about 5,500 acres. The purpose of the salvage in these areas is similar to the purpose of salvage in the LSR, but with more emphasis on recovering the economic value of merchantable timer from trees that were killed or severely damaged. Reduction of fuels remaining on site would benefit the establishing stands at the next entry of fire.

Proposed Action. This action includes salvage of commercial timber on approximately 6,570 acres. Fuels reduction (approximately 13,000 acres) and reforestation (approximately 15,6000 acres) are also proposed across the fire area, including the areas of commercial salvage. Salvage is proposed in ares that burned the most intense where tree mortality is certain. Fuels reduction activities would include cutting of non-commercial small diameter trees, mechanical and/or hand piling of material, and disposal of piles by either utilization or burning. The proposal includes less than 5 miles of construction of temporary roads necessary to provide access for salvage operations. Any temporary roads constructed would be obliterated following their use. No new permanent road construction is proposed.

Scoping. Public participation will be sought at several points during the analysis, including listing of this project in the Fall 2003 and subsequent issues of the Central Oregon Schedule of Projects and on the Deschutes National Forest website. Also, correspondence with agencies, organizations, tribes, and individuals who have indicated their interest would be conducted.

Issues. Preliminary issues identified include the potential effect of the proposed action on: soil productivity; water quality and fish habitat; wildlife habitat (especially threatened and endangered species); snags and down wood habitat; cultural resources; views along a designated scenic byway; and noxious weeds. A No Action alternative will be analyzed in the EIS. Other alternatives would result from the scoping process and refined issues.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment,

will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by January 2003. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability in the **Federal Register.** The final EIS is scheduled to be available April 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

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

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to salvage timber, reduce fuels, and reforest the area. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Davis Fire Recovery decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: September 10, 2003.

Kevin Martin,

Deputy Forest Supervisor.

[FR Doc. 03–23679 Filed 9–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on September 23, 2003 starting at 8 a.m. at the Supervisor's Office at 1645 Highway 20 east, Bend, Oregon. The agenda will include a field tour to discuss fire restoration. Also, one hour will be allocated to info sharing and a Public Forum from 3 p.m. till 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR, 97754, Phone (541) 433–3216.

Dated: September 11, 2003.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 03–23680 Filed 9–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects for 2003 and monitoring of 2002 projects. Agenda topics will include contracts for projects that have been accepted, presentation on other subjects and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on September 23, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger district, 88 Main Street, Stevensville, MT 59860, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: September 11, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–23682 Filed 9–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849, A–821–808, A–823–808]

Continuation of Suspended Antidumping Duty Investigations: Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and Ukraine

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

ACTION: Notice of Continuation of Suspended Antidumping Duty Investigations: Cut-to-Length Carbon Steel Plate from the People's Republic of China, the Russian Federation, and Ukraine.

SUMMARY: The Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that termination of the suspended antidumping duty investigations underlying the suspension agreements on cut-to-length carbon steel plate (''CTL plate'') from the People's Republic of China (''PRC''), the Russian Federation (''Russia''), South Africa, and Ukraine (the ''Agreements''), would likely lead to continuation or recurrence of dumping. *See* Cut to Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa, 68 FR 1038 (January 8, 2003)(''Final ITA Results—PRC, Russia, and South Africa'') and Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Cut-to-Length Carbon Steel Plate from Ukraine, 68 FR 24434 (May 7, 2003)(''Final ITA Results—Ukraine''). On September 4, 2003, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that termination of the Agreements on CTL plate from the PRC, Russia, and Ukraine would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine, Investigations Nos. 731–TA–753–756 (Review), 68 FR 52614 (September 4, 2003)(''Final ITC Results''). Therefore, pursuant to 19 CFR 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the Agreements on CTL plate from the PRC, Russia, and Ukraine.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Kelly Parkhill, 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) 482–5050 or (202) 482–3791, respectively.

EFFECTIVE DATE: September 17, 2003.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2002, the Department initiated, and the Commission instituted, sunset reviews of the Agreements on CTL Plate from the PRC, Russia, South Africa, and Ukraine, pursuant to section 751(c) of the Act. *See* Initiation of Five-Year (''Sunset'') Reviews, 67 FR 56268 (September 3, 2002), and Carbon Steel Plate from China, Russia, South Africa, and Ukraine, 67 FR 56311 (September 3, 2002). As a result of the sunset reviews, the Department found that termination of the Agreements on CTL Plate from the PRC, Russia, South Africa, and Ukraine, would be likely to lead to continuation or recurrence of dumping. *See* 68 FR 1038, (January 8, 2003)(''Final ITA Results'').

On September 4, 2003, the Commission determined, pursuant to section 751(c) of the Act, that termination of the Agreements on CTL plate from the PRC, Russia, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (''Final ITC Results'').

Scope of Review

The products covered under the suspension agreements are hot-rolled iron and non-alloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, and whether or not painted, varnished, or coated with plastics of other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products, hot-rolled, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—*e.g.,* products which have been bevelled or rounded at the edges. Carbon steel plate is covered by the following statistical reporting numbers of the Harmonized Tariff Schedule of the United States (HTS): 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030 (not in coil form), 7211.24.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from this definition is grade X–70 plate.

Determination

As a result of the determinations by the Department and the Commission that termination of the antidumping duty investigations underlying the Agreements would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of those suspended investigations and of the Agreements on CTL plate from the PRC, Russia, and Ukraine. The effective date of continuation is the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to section 751(c)(2) and 751(c)(6) of the investigations underlying the Act, the Department intends to initiate the next five-year reviews of the Agreements on CTL plate from the Russia and Ukraine not later than August 2008.

The Government of China recently requested that the Agreement on CTL plate from the PRC be terminated. The Department expects to publish a notice addressing this request shortly.

Dated: September 11, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–23759 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–804]

Termination of Suspended Antidumping Duty Investigation: Cut-to-Length Carbon Steel Plate From South Africa

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

ACTION: Notice of Termination of Suspended Antidumping Duty

Investigation: Cut-to-Length Carbon Steel Plate from South Africa.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that termination of the suspended antidumping duty investigation on cut-to-length carbon steel plate (''CTL plate'') from South Africa is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Investigations Nos. 731–TA–753–756 (Review) 68 FR 52614 (September 4, 2003)(''Final ITC Results''). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department of Commerce (''the Department'') is terminating the suspended antidumping duty investigation on CTL plate from South Africa. The effective date of termination is October 24, 2002, the fifth anniversary of the date of publication of the suspended investigation, October 24, 1997.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Kelly Parkhill, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC. 20230; telephone: (202) 482–5050 or (202) 482–3791, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2002, the Department initiated, and the Commission instituted, a sunset review of the suspended investigation on CTL plate from South Africa pursuant to section 751(c) of the Act. *See* Initiation of Five-Year (''Sunset'') Review, 67 FR 56268 (September 3, 2002), and Carbon Steel Plate from China, Russia, South Africa, and Ukraine, 67 FR 56311 (September 3, 2003). As a result of the review, the Department found that termination of the suspended investigation on CTL plate from South Africa would likely lead to continuation or recurrence of dumping. *See* Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations, 68 FR 1038 (January 8, 2003).

On September 4, 2003, the Commission determined, pursuant to section 751(c) of the Act, that termination of the suspended investigation on CTL plate from South Africa would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* ''ITC Final Results''.

Scope of Review

The products covered under the suspension agreement are hot-rolled iron and non-alloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this sunset review is dispositive.

Determination

As a result of the determination by the Commission that termination of the suspended investigation is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), is terminating the suspended investigation on CTL plate from South Africa. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), termination of this suspended investigation is effective October 24, 2002, the fifth anniversary of the date of publication of the suspended investigation. The termination of the suspended investigation is effective with respect to all entries, or withdrawals from warehouse of the subject merchandise on or after October 24, 2002.

Dated: September 11, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–23760 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 12, 2003, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of seamless pipe from Romania. This review covers one manufacturer/exporter of the subject merchandise. The period of review is August 1, 2001, through July 31, 2002. Based on our analysis of comments received, these final results do not differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Claessens or Monica Gallardo, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5451 and (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of the antidumping duty administrative review of certain small diameter carbon and alloy seamless standard, line, and pressure

pipe (seamless pipe) from Romania. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 25335 (May 12, 2003) (*Preliminary Results*). The review covers one manufacturer/exporter, S.C. Silcotub S.A. (Silcotub).

We invited parties to comment on our preliminary results of review. Silcotub, the only interested party to submit comments, filed a brief on June 11, 2003.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct the Bureau of Customs and Border Protection (BCBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use

certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, our written description of the merchandise subject to this scope is dispositive.

Separate Rates

Because we are conducting this review in accordance with 19 CFR 351.408, we are applying non-market economy methodology for Silcotub in this review.[1] Silcotub has requested a separate, company-specific antidumping duty rate in this review. In the preliminary results, we found that Silcotub had met the criteria for the application of separate antidumping duty rates. *See Preliminary Results,* 68 FR at 25336–25337. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Silcotub should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the one case brief received in this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated September 9, 2003, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded in the Decision Memorandum is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period August 1, 2001, through July 31, 2002:

Manufacturer/exporter	Margin (percent)
S.C. Silcotub S.A.	0.00

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct the BCBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) For Silcotub, because the margin is zero, no cash deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the prior segment of the proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 13.06 percent, the Romania-wide rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[1] *In Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review,* 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania—Non-Market Economy Status Review (March 10, 2003), placed on the record of this administrative review. The March 10, 2003 decision with respect to Romania's NME status provided that:

This finding will apply to all future administrative proceedings covering periods of investigation or review that fall after January 1, 2003. Where a proceeding's period of investigation or review begins before January 1, 2003, but ends after that date, the Department will use the standard market economy methodology if it determines that a sufficient period of time has passed so that adequate market economy data is available. In addition, the U.S. countervailing duty law will apply now to Romania where the proceeding at issue involves an adequate period of investigation after this effective date.

Dated: September 9, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

Comment 1: Use of Fidelity Steel Manufacturing Corporation's Financial Statements to Calculate Overhead, Selling, General, and Administrative Expenses, and Profit.

Comment 2: Valuation of Natural Gas.

[FR Doc. 03–23620 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New York Coastal Management Program and the Ohio Coastal Management Program.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The New York Coastal Management Program evaluation site visit will be held October 27–31, 2003. One public meeting will be held during the week. The public meeting will be on Thursday, October 30, 2003, from 2:30 p.m. to 4:30 p.m., at the New York Department of Health, 4th Floor Conference Room, 5 Penn Plaza, New York, New York.

The Ohio Coastal Management Program evaluation site visit will be held November 3–7, 2003. One public meeting will be held during the week. The public meeting will be on Wednesday, November 5, 2003, at 7 p.m., at the Erie County Commissioners Office, Large Chambers, 3rd Floor, 247 Columbus Avenue, Columbus, Ohio.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: September 11, 2003.

Richard W. Spinrad, PhD.

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–23698 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of the Record of Decision in the Case of the Goat Canyon Enhancement Project at the Tijuana River National Estuarine Research Reserve

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has signed the Record of Decision (ROD) in the case of the Goat Canyon Enhancement Project at the Tijuana River National Estuarine Research Reserve. All requirements of the National Environmental Policy Act have been fulfilled. NOAA has concurred with the decision to construct two sediment basins and to undertake mitigation pursuant to the section 7 consultation with the United States Fish and Wildlife Service and the California State Historic Preservation Office.

To Obtain a Copy of the ROD Contact: Ms. Nina Garfield, (301) 563–1171, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM2, Silver Spring, MD 20910. Copies of the ROD are available upon request to the Estuarine Reserves Division.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Dated: September 11, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–23699 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080803C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Mid-Atlantic Ocean

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by

harassment, incidental to conducting oceanographic surveys in the Mid-Atlantic Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than October 17, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 21, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, two seismic surveys will be conducted in the Mid-Atlantic Ocean. The Trans-Atlantic Geotransect (TAG) cruise will be centered at 26oN and 45oW in the Mid-Atlantic Ocean during mid- to late-October 2003, for a total of six days of seismic surveying. The Atlantic Deep Western Boundary Current (ADWBC) cruise will occur between 39o and 42oN and between 45o and 52.5oW, and will take place at an, as of yet, unscheduled date (likely in July, 2004) for a total of approximately 20 days of surveying. These operations will take place in international waters.

The seismic survey work conducted during the TAG cruise is part of a multi-disciplinary experiment, taking place in the TAG Active Mound area over a period of nine months. The TAG active mound (26oN on the Mid-Atlantic Ridge), which is one of the largest hydrothermal deposits found to date on the seafloor, is a large, focused mineral deposit on a slow-spreading ridge. The purpose of the TAG cruise is to delineate the nature, position, and size of any heat sources (low-velocity zones) that might drive convection at the TAG active mound, and more generally, to provide an understanding of crustal architecture in the TAG region. More specifically, the TAG experiment will address key issues at the TAG site: (1) the nature of the heat source driving circulation, (2) the relationship between faulting on the eastern flank and fluid flow at the mound, (3) the possible existence of a low-velocity zone beneath the rise axis, and (4) the hydraulic connectivity of the shallow TAG mound.

The ADWBC cruise will determine the configuration, age, and paleoceanographic significance of the sedimentary sequences on J Anomaly Ridge and Southeast Newfoundland Ridge, which may show evidence for strong boundary currents dating to the early Paleocene. Proposed tracklines for the seismic survey were chosen with four primary objectives in mind: (1) to map the main reflection sequences across the full extent of the ridges and onto the edges of adjacent abyssal plains, (2) to obtain continuity in tracing sequences by profiling around major interruptions (seamounts) and optimizing track crossings, (3) to provide abundant crossing lines in areas where existing seismic and bathymetric data suggest that there are outcrops of pre-Neogene strata, and (4) to take advantage of good-quality seismic data, where they exist (e.g., Conrad 2510 MCS), in order to make loop correlations between tracks.

Description of the Activity

The TAG seismic survey will involve a single vessel which will conduct the seismic work, the *R/V Maurice Ewing*, operated by LDEO under a cooperative agreement with the U.S. National Science Foundation (NSF), owner of the vessel. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and will deploy and retrieve Ocean Bottom Hydrophones (OBHs). A hydrophone streamer will not be towed during the TAG cruise. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the OBHs and Ocean Bottom Seismometers (OBSs) will receive the reflected signals and transfer the data to the onboard processing system. All planned geophysical data acquisition activities will be conducted by LDEO scientists with onboard assistance by the scientists who proposed the study. The TAG program will consist of 185 km (100 n.mi.) of survey lines. There will be a total of three seismic lines, two along- and one across-axis of the TAG. Water depths in the area will vary from 1500 to 4500 m (4921–14,764 ft).

The ADWBC cruise will likely involve the oceanographic research vessel *R/V Knorr*, a U.S. Navy-owned ship operated by the Woods Hole Oceanographic Institution (WHOI). However, another vessel may ultimately be chosen for the survey. Other possible vessels include, but are not limited to, the *R/V Maurice Ewing* or a vessel from the University-National Oceanographic Laboratory System (UNOLS). The vessel would be using a portable LDEO seismic system to conduct the seismic survey. The vessel will deploy 2 General Injector guns as an energy source, plus a towed streamer containing hydrophones to receive the returning acoustic signals. The hydrophone array will consist of a 600–m (1969 ft) solid state streamer with a 200–m (656 ft) tow leader. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the 2 GI guns are towed along the survey line, the hydrophone array will receive the returning signals and transfer the data to the onboard processing system. All planned geophysical activities will be conducted by the scientists who have proposed the study, while LDEO will provide the portable high-resolution seismic system that will support the seismic surveys for the proposed study. The ADWBC program will consist of 4334 km (2340 n.mi.) of seismic profiles that will be shot over a period of 20 days. The most detailed grids of seismic lines are proposed for the southern end of J Anomaly Ridge and for moats around seamounts on the crest of the Southeast Newfoundland Ridge - both are areas where there appear to be extensive pre-Neogene outcrops. Water depths in the area will vary from 4000 to 5000 m (13,124–16,405 ft).

The procedures to be used for the two seismic studies will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed seismic surveys will use conventional seismic methodology with a towed airgun array as the energy source, and either a towed hydrophone streamer or OBH and OBS receivers placed on the bottom to receive the reflected signals. For the TAG survey, eighteen OBHs will be deployed (and recovered) by the *Maurice Ewing* – eight along each of the long axis lines and two on the across axis line. After the seismic lines are shot, the data will be downloaded and the OBSs will be retrieved during an, as of yet, unscheduled cruise in the summer of 2004 (during which no seismic sound sources will be used). Along three selected seismic lines, 13 OBS receivers will be placed in the proposed study area by the *R/V Alvin* from 7–24 June 2003, before the arrival of the *Maurice Ewing*. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout both cruises, and a lower-energy sub-bottom profiler will also be operated during most of both surveys. During the ADWBC study, coring of numerous sedimentary outcrops known to exist on the ridges will also take place. During both cruises, there will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The *R/V Maurice Ewing* will be used as the source vessel during the TAG cruise, and the *R/V Knorr* will likely be used as the source vessel during the ADWBC cruise. Both vessels will tow airgun arrays along predetermined lines, and will also serve as platforms from which vessel-based marine mammal observers will watch for marine mammals before and during airgun operations.

During TAG-study airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 seconds (OBS lines during the TAG cruise). The 60–90 sec. spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The airgun array to be used will consist of 20 2000 psi Bolt airguns, towed at a depth of 7.5 m (24.5 ft). The 20–gun array will include airguns ranging in chamber volume from 80 to 850 in^3, with a total volume of 8,575 in^3. These airguns will be spaced in an approximate rectangle with dimensions of 35 m (115 ft) (across track) by 9 m (30 ft) (along track).

The ADWBC seismic survey will be high-resolution, consisting of two 105 in^3 GI airguns with a total volume of approximately 210 in^3, spaced 7.8 m (26 ft) apart, and towed 37 m (121 ft) behind the vessel at a depth of 2–3 m (7–10 ft). Towing airguns at this shallow depth is accomplished by suspending the guns from floats, and the resulting short-period free surface ''ghosting'' keeps the spectral content broad with usable signals up to 300–350 Hz. These airguns produce an unusually clean impulse with sufficient energy to penetrate many hundreds of meters of sediment. Airgun firing, timing, and synchronizing is handled by a LDEO-built controller, which is integrated with a SUN workstation-based DGPS navigation, data logging, and fire control system. The air is produced by a standalone Price Co. 2000 psi compressor, and the seismic signals are detected by a solid state ITI hydrophone ''Stealtharray'', with 48 12.5–m (41 ft) long channels, and a total length of 600 m (1969 ft).

The dominant frequency components for both airgun arrays is 0 - 188 Hz. The 2–airgun array will have a peak sound source output level of 237 dB re 1 μPa or 243 dB peak-to-peak (P-P). The 20–airgun array will have a peak sound source output level of 255 dB re 1 μPa or 262 dB P-P. Because the actual source is a distributed sound source (2 or 20 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, several additional acoustical data acquisition systems will be operated during most or all of the cruises. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar, and/or a 3.5–kHz sub-bottom profiler. These mid-frequency sound sources are commonly operated from research vessels simultaneous with airgun arrays as well as in the absence of airgun activity.

The Atlas Hydrosweep sonar will be used during cruises by the R/V *Maurice Ewing*, is mounted in the hull of the vessel, and operates in three modes depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft); source output is 210 dB re 1 μPa-m rms and a single 1–millisec (ms) pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the -3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms (normally used only during start up). The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The

total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 ms in water depths <500 m (1640.4 ft) and 10 ms in the deepest water. For each segment, ping duration is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

If the *R/V Knorr* is used for the ADWBC cruise, the SeaBeam 2100/12 multibeam 12 kHz bathymetric sonar system will be used, with a source output of 237 dB re 1 μPa-m. Operation of this system is similar to that of the Atlas Hydrosweep (described above). The SeaBeam 2100/12 system has a swath width of about 3 times the water depth, so it will provide data over swaths 10–15 km (5–8 n.mi.) wide during most of the survey.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the vessel. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 sec. but a common mode of operation is to broadcast five pulses at 1–sec. intervals followed by a 5–sec. pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 μPa, 800 watts, while nominal source output is 200 dB re 1 μPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

For the ADWBC cruise, the multibeam bathymetry and sub-bottom profiling will be used to define windows where erosion or non-deposition has exposed deeper sequences suitable for piston coring. Coring transects across these windows will provide biostratigraphic age determinations that can be used to constrain the age of reflections throughout the study area. There will be five days of piston coring following completion of the ADWBC seismic survey.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Mid-Atlantic Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. There will be differences in species composition between the two study sites in the Mid-Atlantic, since the ADWBC cruise will take place at a more northern latitude than the TAG cruise. Therefore, species with more northerly distributions are only likely to be sighted during the ADWBC cruise, and species with more southerly/tropical distributions will only be encountered during the TAG cruise, if at all. The two proposed cruises are also scheduled to occur in different seasons, and that could have an effect on the species and numbers present in the area. Approximately 34 species of cetaceans are known to occur within the proposed study areas in the Mid-Atlantic Ocean, six of which only rarely occur in the areas. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), northern bottlenose whale (*Hyperoodon ampullatus*), True's beaked whale (*Mesoplodon mirus*), Gervais' beaked whale (*Mesoplodon europaeus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), white-beaked dolphin (*Lagenorhynchus albirostris*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), short-finned pilot whale (*Globicephala macrorhynchus*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Also, six species of pinnipeds could potentially be encountered during the proposed seismic surveys, although their occurrence in the study area is unlikely. These include the bearded seal (*Erignathus barbatus*), hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), ringed seal (*Pusa hispida*), grey seal (*Halichoerus grypus*), and the harp seal (*Pagophilus groenlandicus*). Additional information on most of these species is contained in Caretta *et al.* (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Potential Effects on Marine Mammals

The sound pressure fields for the 2–GI and 20–gun arrays have been modeled by LDEO, in relation to distance and direction from the airguns. Table 1 in the application (LDEO Mid-Atlantic 2003) shows the maximum distances from the arrays where sound levels of ≥190, 180, 170, and 160 dB re 1 μPa (rms) are predicted to be received:

Airgun Array	Predicted RMS Radii in meters/ft			
	190 dB	180 dB	170 dB	160 dB
2 GI guns	17/56	54/177	175/574	510/1673
20 airguns	275/902	900/2953	2600/8531	9000/29,529

Notice of a previous (LDEO) application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. That information is not repeated here. However, possible effects of the sub-bottom profiler, which was not used in the project described in that notice, are described below. Details on acoustic sources from the 2–GI gun array, which will be installed on the *R/V Knorr* for the ADWBC cruise as part of an LDEO

portable high-resolution seismic system, were described in an earlier **Federal Register** notice on April 11, 2003 (68 FR 17773). The current LDEO Mid-Atlantic application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

Possible Effects of the Sub-bottom Profiler Signals

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 μPa-m). The 160 and 180 dB re 1 μPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the *Maurice Ewing* has a maximum source level of 204 dB re 1 μPa-m. Thus the received level would be expected to decrease to 160 and 180 dB at about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively (assuming spherical spreading). Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Masking by Sub-bottom Profiler Signals

There is little chance that marine mammal communications will be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the animals' calls, which would avoid significant masking.

Behavioral Responses Resulting from Sub-bottom Profiler Signals

Marine mammal behavioral reactions to pulsed sound sources and responses to the sub-bottom profiler are likely to be similar to those of other pulsed sources at the same received levels. However, the pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multi-beam sonar. Therefore behavioral responses rising to Level B harassment are not expected unless marine mammals are very close to the source, e.g. within about 160 m (525 ft) below the vessel, or a lesser distance to the side. Because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to signals from the sub-bottom profiler is unlikely to result in a ''take'' by harassment.

Hearing Impairment and Other Physical Effects

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar that will be used during the planned project. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or permanent hearing impairment in marine mammals appear to be higher than 180 dB. Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is briefly in a position immediately adjacent to the source.

Furthermore, the sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources before the mammals would be close enough to be affected by the less intense sounds from the sub-bottom profiler. In the event that mammals do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources (discussed later in this document) would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the two Mid-Atlantic Cruises

As described previously (68 FR 17909, April 14 2003), animals subjected to sound levels ≤160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160–dB criterion is based on studies of baleen whales (mysticetes), which are low frequency hearing specialists. In contrast, odontocete hearing at low frequencies is relatively insensitive, and dolphins and pilot whales generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, LDEO believes they are less likely to experience Level B harassment at 160 dB, and a more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

The estimates of takes by harassment are based on the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 μPa (rms) by operations with the 20–airgun array and the 2 GI guns, during the TAG and ADWBC cruises, respectively. Based on marine mammal density sightings and effort data collected during a survey of offshore waters northeast of the Azores by Lens (1991), LDEO used their estimates of marine mammal density to compute the best (and maximum) estimates of the number of marine mammals that may be exposed to received levels ≥160–dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment). The best estimates of densities were then multiplied by the linear extent of the proposed survey effort and by twice the 160 dB radius around the applicable airgun array. The proposed survey effort is 185 km (100 n.mi.) for the TAG cruise, and 4329 km (2340 n.mi.) for the ADWBC cruise. The 160–dB radius for the TAG cruise (20–gun array) is 9000 m (29,529 ft), whereas that for the ADWBC cruise (2 GI guns) is 510 m (1673 ft). For large cetaceans, LDEO used 0.5x the densities seen during the Lens (1991) survey to calculate the numbers that might be exposed to seismic sounds, but even this reduced number is likely a high estimate, because the proposed survey areas are likely less productive, so feeding aggregations similar to those seen by Lens (1991) are not likely to be seen. In particular, the two areas where the proposed surveys will be conducted are farther offshore and likely in less productive waters than the area surveys northeast of the Azores (Lens 1991). Thus, densities are likely to be much lower in the two proposed survey areas than in the Lens (1991) survey area.

Based on this method, tables 3 and 4 of LDEO's application give the best estimates, as well as maximum estimates, of densities for each species or species group of cetacean in the proposed seismic survey areas during the TAG and ADWBC cruises, respectively, that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study areas of the Mid-Atlantic Ocean. During the TAG cruise, 38 of the marine mammals exposed to sounds ≥160 dB re 1 μPa (rms) would be endangered species, primarily fin (18) and sperm whales (15). During the ADWBC cruise, 49 of the marine mammals exposed to sounds ≥160 dB re 1 μPa (rms) would be endangered

species, primarily fin (24) and sperm whales (20). During both research cruises, Delphinidae would account for 92 percent of the overall estimate for potential taking by harassment during each of the proposed seismic surveys (i.e., 709 of 772 (TAG) and 943 of 1028 (ADWBC)). While there is no agreement regarding any alternative ''take'' criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥170 dB re 1 μPa (rms) were to be affected sufficiently to be considered taken by Level B harassment, then the best estimate for common dolphins (the most abundant dolphin in the area) would be 91 rather than 316 during the TAG cruise, and 144 rather than 419 during the ADWBC cruise. These are based on the predicted 170–dB radius around the 20- and 2–airgun arrays (2600 and 175 m (8530 and 574 ft), respectively), and are considered to be more realistic estimates of the number of each species of delphinid that may be disturbed. Therefore, the total number of animals likely to react behaviorally is considerably lower than the 772 (TAG cruise) or 1028 (ADWBC cruise) animals that LDEO has estimated in Table 3 and 4 (LDEO Mid-Atlantic, 2003).

Conclusions-Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. For Bryde's whales, LDEO's best estimate is that 1 animal during each of the cruises, which translates to 3 percent of the North Atlantic population for this species in the area of the TAG survey, and 1.5 percent of the North Atlantic population for this species in the area of the ADWBC survey, has the potential to be exposed to sound levels ≥160 dB re 1 μPa (rms) and potentially affected. LDEO's best estimate is that 18 (TAG) and 24 (ADWBC) fin whales, both of which are <0.1 percent of the estimated North Atlantic fin whale population (IWC 2003), will be exposed to sound levels <160 dB re 1 μPa (rms) and potentially affected. Similarly, only 15 (TAG) and 20 (ADWBC) sperm whales, or approximately 0.1 and 0.2 percent of the estimated North Atlantic sperm whale population would receive seismic sounds ≥160 dB. Therefore, based on the relatively low numbers of marine mammals that will be exposed at levels ≥160 dB and the expected impacts at these levels, NMFS has preliminarily determined that this action will have a negligible impact on the affected species or stocks.

Larger numbers of odontocetes may be affected by the proposed activities, but the populations sizes of the main species are large and the numbers potentially affected are small relative to the population sizes. The best estimate of the total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey areas in the Mid-Atlantic Ocean is 746 for the TAG cruise, and 991 for the ADWBC cruise. Of these, 709 (TAG cruise) and 943 (ADWBC cruise) are Delphinidae, and of these about 204 (TAG cruise) and 322 (ADWBC cruise) might be exposed to ≥170 dB. Only 316 and 419 common dolphins (the most abundant delphinid in the proposed survey areas) are expected to be exposed to seismic sounds ≥160 dB in the proposed TAG and ADWBC seismic survey areas, respectively. This represents considerably less than 0.2 and 0.3 percent of the North Atlantic population of common dolphins. Of these, 91 and 144, respectively, might be exposed to ≥170 dB. These figures are much less than 0.1 percent of the North Atlantic population and the 170–dB values (91 and 144) are believed to be a more accurate estimate of the number potentially affected. Smaller numbers of other species of dolphins will be exposed to seismic sounds ≥160 dB during the proposed surveys, and the numbers for each species represent considerably less than 0.1 to 0.7 percent of each population. The numbers that might be exposed to ≥170 dB are even smaller and represent considerably less than 0.1 to 0.2 percent of each population; these latter percentages are believed to be a more accurate estimate of the numbers potentially affected. Based on the relatively low numbers of marine mammals that will be exposed at levels ≥160 dB and the expected impacts at these levels, NMFS has preliminarily determined that this action will have a negligible impact on the affected species or stocks.

Altogether, proposed mitigation measures such as controlled speed, course alteration, look-outs, non-pursuit, ramp-ups, and power-downs when marine mammals are seen within defined ranges (See Mitigation) will reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions-Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic surveys in the Mid-Atlantic Ocean. Most have a coastal distribution or are distributed along the pack-ice edge. Therefore, it is unlikely that pinnipeds will be encountered in either study area. However, if pinnipeds are encountered, they are more likely to be seen during the ADWBC cruise in the northern Mid-Atlantic than during the TAG cruise. A few gray seals, which are normally found in coastal areas might be seen during the ADWBC cruise. In addition, a few vagrant harbor seals, harp seals, or hooded seals might be encountered. None of the pinniped species is considered endangered or vulnerable.

Because no seismic surveys will take place in coastal and nearshore areas, the best estimate of the numbers of each of the more common (but unlikely) species that might be taken by Level B harassment is no more than 2 and is most likely 0. For the other less-common species the best estimate is zero. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Therefore, based on the relatively low numbers of marine mammals that will be exposed, NMFS has preliminarily determined that this

action will have a negligible impact on the affected species or stocks.

Mitigation

For the proposed TAG seismic survey, LDEO will use a 20–gun array with a total volume of 8575 in^3. Individual airguns will range in size from 80 to 850 in3. For the ADWBC cruise, LDEO will use 2 GI guns with a total volume of 210 in^3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields were modeled by LDEO in relation to distance and direction from the 2 GI guns and the 20–gun array, as shown in Figures 5 and 6 (LDEO Mid-Atlantic, 2003). The radii around the arrays where the received level would be 180–dB re 1 μPa (rms) (NMFS' threshold level for onset of Level A harassment applicable to cetaceans) were estimated as 54 m (177 ft) and 900 m (2953 ft), respectively, for the 2–GI and 20–gun array. The radii around the 2 GI guns and the 20–gun array where the received level would be 190 dB re 1 μPa (rms), (NMFS' threshold level for onset of Level A harassment applicable to pinnipeds), were estimated as 17 m (56 ft) and 275 m (902 ft), respectively. A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be used to define the safety radii to be used for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180- (cetaceans) and 190- (pinnipeds) dB radii as the safety radii.

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the airguns if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in3), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. Ramp-up will not occur for the 2–GI gun array because the total air discharge volume is small (210 in3). Please refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

The directional nature of the 6–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (2 or 20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Marine Mammal Monitoring

At least two vessel-based observers will be stationed aboard LDEO's seismic survey vessel during seismic operations in the Mid-Atlantic Ocean. It is proposed that one or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, during periods without seismic activity. Vessel-based observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight ramp-up and airgun operations, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, the designated safety radii. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered down if marine mammals are observed in or about to enter the safety radii. At least one marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using NVDs. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period. After 30 minutes of observation, the ramp-up procedure will be followed.

The observers will watch for marine mammals from the highest practical vantage point on the vessel, which is either the flying bridge or the bridge. On the *R/V Maurice Ewing*, the observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The proposed monitoring plan is summarized later in this document.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Mid-Atlantic seismic surveys, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) Power-down procedures; (3) Shut-down procedures; and (4) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Power-down and Shut-down Procedures

Received sound levels have been modeled for the 2–GI and 20–gun arrays. Based on the modeling, estimates of the 190-, 180-, 170-, and 160–dB re 1 μPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) radius, respectively. These 180- and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety radius when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 in^3 airgun will be operated during the interruption of seismic survey. When the 2 GI guns are in use, a shut-down

rather than a power-down will likely be necessary. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radius. The animal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked, and bottlenose whales).

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun arrays begin operating after a specified duration without airgun operations. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety radii for the full gun array will be maintained.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless one airgun with a sound pressure level (SPL) of at least 180 dB has been maintained during the interruption of seismic activity. Therefore, it is likely that the 20–gun array will not be ramped up from a shut-down at night or in thick fog, since the safety radii for this array will not be visible during those conditions.

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 Mid-Atlantic seismic programs in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. At night, NVDs will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation.

At least two observers will be based aboard the vessel, and at least one will be an experienced marine mammal observer. Observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. The second observer will also be on watch part of the time, including the 30 minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. LDEO bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night, when designated observers will not be on duty. If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of airgun operations and during the subsequent ramp-up procedures. Ramp-up is not required for the 2 GI gun array, but observers must watch for 30 minutes prior to operation of the 2 GI guns and the safety radii must be visible.

Reporting

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zones. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun power- and shut-downs will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun power-down or shut-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of each cruise in the Mid-Atlantic Ocean. The end of the TAG cruise is predicted to occur on or about October 30, 2003. The end of the ADWBC cruise is unknown at this time. The report will describe the operations that were conducted and the marine mammals that were detected. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an Environmental Assessment (EA) for the two Mid-Atlantic surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting two seismic surveys in the Mid-Atlantic Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting two seismic surveys in the Mid-Atlantic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: September 11, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23766 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080703A]

Marine Mammals; File No. 358–1585–04

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, P.O. Box 25526, Juneau, Alaska 99802–5526 [Principal Investigator: Robert Small, Ph.D.] has been issued an amendment to scientific research Permit No. 358–1585–02 as amended by a minor change [No. -03].

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 7, 2003, notice was published in the **Federal Register** (68 FR 33477) that an amendment of Permit No. 358–1585, issued September 30, 2002 (67 FR 64098), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the Holder to conduct additional activities on harbor seals that include: permanently marking females that receive implanted VHF transmitters to enable identification from a distance without further disturbance to determine if female has a pup; applying a Passive Integrated Transponder (PIT) tag to identify recaptured individuals to assess change in health or contaminant loads over time; using ultrsound to diagnose pregnancy and reproductive condition of females; attaching a sonic tag for realtime tracking of foraging behavior while simultaneously conducting acoustical surveys of prey availability; and attaching an Underwater Timed Picture Recorder (UTPR) with Time Depth Recorder to view prey selection and readily calculate pursuit and handling times.

Dated: September 9, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23765 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Notice of availability of a draft regional restoration plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of a Draft Regional Restoration Plan: Region 2, for the Louisiana Regional Restoration Planning Program.

SUMMARY: Notice is hereby given that a document entitled, ''Draft Louisiana Regional Restoration Plan: Region 2'' is available for public review and comment. This document has been prepared by the state and federal natural resource trustee agencies (National Oceanic and Atmospheric Administration (NOAA); U.S. Department of the Interior (DOI); Louisiana Oil Spill Coordinator's Office (LOSCO); and Louisiana Departments of Environmental Quality (LDEQ); Natural Resources (LDNR); and Wildlife and Fisheries (LDWF)) to address natural resource injuries resulting from discharges of oil in Region 2 of the State of Louisiana.

The draft Region 2 Restoration Plan (RRP–2) is the first of nine regional plans being prepared under the statewide Louisiana Regional Restoration Planning Program (RRP Program) developed by NOAA, DOI and the State of Louisiana. The purposes of the RRP Program include expediting restoration of natural resources injured by oil spills and reducing the cost of

natural resource damage assessments (NRDA)—the process by which trustee agencies assess and restore resources injured by oil spills.

The trustees are seeking public comment on the draft RRP–2. Public comments on the Plan will be accepted during the thirty (30) day public comment. Opportunities for public comment on the statewide program are provided through public review and comment on documents contained in the Administrative Record maintained at the locations listed at the end of this Notice.

DATES: Comments on the ''Draft Louisiana Regional Restoration Plan: Region 2'' must be submitted in writing by October 23, 2003.

ADDRESSES: Requests for copies of the ''Draft Louisiana Regional Restoration Plan: Region 2'', as well as written comments, should be sent to William Conner, Chief, NOAA/Damage Assessment Center, 1305 East-West Highway, SSMC #4, 10th floor, Silver Spring, MD 20910; fax number 301/713–4389; e-mail address: *William.Conner@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact William Conner at 301/713–3038 ext. 190, or at *William.Conner@noaa.gov.*

SUPPLEMENTARY INFORMATION: Louisiana's economy is based, in part, on the state's vast natural resources. Both renewable (hunting, fishing, forest products) and nonrenewable (cultural, oil, natural gas) resources are important, and the industries associated with each have coexisted for years. Although Louisiana's oil and gas industry tries to avoid adverse impacts on renewable natural resources, injuries do occur as a result of oil spill incidents. The impact of these incidents on fish, wildlife and the environment can be significant and adversely affect the industries and communities depending on natural resources for commerce and recreation.

Federal and state natural resource trustees have developed the first statewide comprehensive Regional Restoration Planning Program to assist the natural resource trustees in carrying out their responsibilities to restore the natural resources that have been injured by oil spills. The goal of this planning effort was to establish a statewide program that would: expedite and reduce the cost of the NRDA process; increase predictability by describing in detail the NRDA process; and increase restoration of lost natural resources and services by expediting resolution of claims. The statewide Program describes a number of additional case settlement alternatives that will assist the trustees and Responsible Parties in negotiations to resolve Responsible Party liabilities for incidents. These settlement alternatives generally represent different ways of resolving liability from an incident under one or the other (or both) of the two usual options: Responsible Party implemented restoration, or Responsible Party cash settlement and trustee implemented restoration.

The Louisiana Regional Restoration Planning Program divides the state into nine regions. For each region, a Regional Restoration Plan will be developed that identifies: resources which could potentially be injured by incidents; appropriate restoration types to restore those resources; and available restoration projects for each of the restoration types.

The draft RRP–2 covers an area of southwest Louisiana, including all or part of the following parishes: Ascension, Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, and St. John the Baptist. The predominant habitats in this region are coastal herbaceous wetlands, oyster reefs, and coastal forested wetlands. One of the key features of the draft RRP–2 is the unit restoration costs determined for these habitats. The unit costs, developed to facilitate cash settlements, include all costs to conduct the project planning, engineering and design, land rights, permitting, implementation, monitoring, operations and maintenance, contingencies, and trustee oversight. To keep the costs as accurate as possible, it is anticipated that they will be periodically reviewed and updated as new data become available. Any changes made to the estimates will be made available for public review and comment.

The natural resource trustees (NOAA, DOI, LOSCO, LDEQ, LDNR, LDWF) are designated pursuant to 33 U.S.C. 2706(c), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. Pursuant to La. Rev. Stat. 30:2460, the State of Louisiana Oil Spill Contingency Plan (September 1995) describes the state trust resources to include the following: vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. DOI has been designated as trustee for the natural resources that it manages or controls. Examples of those resources are described in the National Contingency Plan, 40 CFR 300.600(b)(2) and (3), include the following and their supporting ecosystems: migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by DOI. NOAA's trust resources include, but are not limited to: commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Pursuant to 15 CFR 990.56, the natural resource trustees are authorized to develop regional restoration plans as part of Oil Pollution Act's mandate for the trustees to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services injured by oil spill incidents and to compensate for interim losses of such resources and services.

The Administrative Record for the statewide program and RRP–2 is being maintained at: (1) NOAA Damage Assessment Center, SSMC #4, 1305 East-West Highway, Silver Spring, Maryland 20910–3281; (2) Louisiana Oil Spill Coordinator's Office, Suite 405, 150 Third Street, Baton Rouge, LA, 7081; and (3) *http://www.darp.noaa.gov/seregion/larrpar.htm.*

The Record includes documents that the trustees relied upon during the development of the Draft Louisiana Regional Restoration Plan: Region 2. Pursuant to 15 CFR 990.23 & 990.56, the trustees sought public involvement in developing the Draft Louisiana Regional Restoration Plan: Region 2, through public review and comment of the documents contained in the Record, as well as through publication of the ''Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement''. Further, opportunity for public review will become available when the Louisiana Regional Restoration Planning Program/Final Environmental Impact Statement is prepared.

Dated: September 11, 2003.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service.

[FR Doc. 03–23697 Filed 9–16–03; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Integrated Fire Support in the Battlespace will tentatively meet in closed session on January 14–15, 2004; February 11–12, 2004; and March 17–18, 2004, at locations to be determined. The Task Force will apply the methodology developed in the 2001 Precision Targeting Summer Study to broadly develop the system of systems required to provide truly integrated fire support.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will assess: the adequacy of current and proposed munitions with respect to speed, accuracy, lethality, cost, *etc.,* to meet the spectrum of threats; Intelligence Surveillance and Reconnaissance (ISR) techniques and mechanisms to meet the needs of tactical and operational battlefield forces; the adequacy of battlefield command and control and integration techniques for tactical, operational, and strategic forces operating on the battlefield; the current impediments to a fully integrated Air, Land and Sea fire support; and the need for predictive engagement tools and derived intelligence products to guide the battlefield commander in use of forces to shape the outcome to the desired effect.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: September 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–23634 Filed 9–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method and Apparatus for Educating Asthma Sufferers and Caregivers

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/829,007 entitled ''Method and Apparatus for Educating Asthma Sufferers and Caregivers,'' filed April 10, 2001. Foreign rights are also available (PCT/US01/11591). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is directed at an assessment method and apparatus for asthma patients and healthcare providers to use in assessing a particular case of asthma and/or learning about different aspects of asthma. More particularly, the invention relates to a scoring system for determining the severity of asthma and the current situation of an asthma patient.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–23734 Filed 9–16–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Modify a Draft Environmental Impact Statement for the Lake Okeechobee Watershed Project

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

ACTION: Notice of intent; modification.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, previously published a Notice of Intent (NOI) to prepare an integrated project Implementation Report/Draft Environmental Impact Statement (PIR/DEIS) for the Lake Okeechobee Watershed Project on August 5, 2002 (67 FR 50657). Following publication of the NOI, a fifth separable element, modification of the Lake Istokpoga Regulation Schedule, was added to the Lake Okeechobee Watershed Project. The four initially described elements, as well as the project's collaborator, intent, authorization, plan formulation process, issues, and PIR/EIS publication date remain as described in the original NOI.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Clarke, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, by e-mail *ernest.clarke@saj02.usace.army.mil*, or by telephone at 904–232–1199.

SUPPLEMENTARY INFORMATION: *a. Study Area:* The study area remains as originally described, except that it will be expanded to include portions of Highlands County. Lake Istokpoga is located within Highlands County, and drains into the Kissimmee River and Lake Okeechobee. Lake Istokpoga levels are regulated through water control devices, and in turn affect the water and nutrient budget of Lake Okeechobee.

b. Project Scope: In addition to four elements described in the original NOI, the Lake Okeechobee Watershed Project will now include a study of potential structural and operational changes to the water management system for the purpose of improving ecologic conditions in Lake Istokpoga. This element involves the development of a plan to address water resource problems in the Lake Istokpoga Basin, balancing environmental needs, flood control and water supply.

c. Scoping: Public workshops will continue to be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. While no public workshop is currently scheduled, the exact location, dates, and times of future meetings will be announced in public notices and local newspapers and on the Everglades Restoration Web site at *www.evergladesplan.org*.

Dated: September 3, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–23732 Filed 9–16–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Preapre an Environmental Impact Statement for Denver Water's Moffat Collection System Project

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE) is preparing an Environmental Impact Statement (EIS) to analyze the direct, indirect and cumulative effects of a water supply project (Moffat Collection System Project) by the City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water). The Moffat Collection System Project will provide a solution to four needs identified by Denver Water in its municipal water supply system: (1) A reliability problem associated with the Moffat Collection System (the norther portion of Denver Water's system); (2) a system-wide vulnerability problem; (3) a lack of operational flexibility in the entire system; and (4) an additional firm yield of 18,000 acre-feet to address near-term water supply demands. Denver Water has not selected a project but will be exploring alternatives through the National Environmental Policy Act (NEPA) process to result in a preferred alternative. Construction of the Moffat Collection System Project is expected to result in temporary and permanent impacts to jurisdictional waters of the United States, thereby requiring a Clean Water Act section 404 permit.

The COE has prepared a scoping document to familiarize other agencies, the public and interested organizations withe the preliminary project alternatives and potential environmental issues that may be involved. The scoping document includes a description of the problems that the Moffat Collection System Project must address, a preliminary list of project alternatives, and various environmental/resource issues that will be addressed in the EIS. Copies of the scoping document will be available at the public scoping meetings or can be requested by mail. The EIS will be prepared according to the COE's parocedures for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4332(2)(c), and consistent with the COE's policy to facilitate public understanding and review of agency proposals.

DATES: Scoping meetings will be held at three locations:

1. October 7, 2003, 7 to 9:30 p.m. at the Fairview High School Cafeteria, (address), Boulder, CO.
2. October 8, 2003, 7 to 9:30 p.m. at the Highlands Masonic Temple, 3550 Federal Boulevard, Denver, CO.
3. October 9, 2003, 7 to 9:30 p.m. at the Silver Creek Lodge, (address), Silver Creek, CO.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action and EIS should be addressed to Chandler Peter, Project Manager, U.S. Army Corps of Engineers, 2232 Dell Range Blvd., Suite 210, Cheyenne, WY 82009 or at (307) 772–2300.

SUPPLEMENTARY INFORMATION: Denver Water is responsible for providing reliable, high quality drinking water to over 1.2 million customers. Through Denver Water's Integrated Resources Plan (IRP), developed in 1997 and updated in 2002, and recent events, they identified four needs in the Moffat Collection System that have to be solved. These needs are: (1) Moffat Collection System reliability, (2) System vulnerability, (3) Lack of operational flexibility in the system, and (4) Providing additional firm yield of 18,000 acre-feet.

The Reliability Need: Existing water demands served by Denver Water's Moffat Collection System exceed available supplies during a drought, causing a water supply reliability problem. In a severe drought, even in a single severe dry year, the Moffat Treatment Plant—one of three treatment plants in Denver's system—is at a significant level of risk of running out of water.

The Vulnerability Need: Denver Water's collection system is vulnerable to manmade and natural disasters because 90 percent of available reservoir storage and 80 percent of available water supplies rely on the unimpeded operation of Strontia Springs Reservoir and other components of Denver's Water's South System.

The Flexibility Need: Denver Water's treated water transmission, distribution, and water collection systems are subject to failures and outages caused by routine maintenance, pipe failures, treatment plant problems, and a host of other unpredictable occurrences that are inherent in operating and maintaining a large municipal water supply system. These stresses to Denver Water's ability to meet its customers' water supply demands require a level of flexibility within system operations that is not presently available.

The Firm Yield Need: Denver Water's near-term water resource strategy and water service obligations that have occurred since the IRP was developed, has resulted in a need for 18,000 acre-feet of new near-term water supplies. This need was identified after first assuming successful implementation of a conservation program construction of a non-potable recycling project, and implementation of a system refinement program.

Denver Water has identified four preliminary alternatives that would address these needs: (1) Enlarge Gross Reservoir; (2) Build a new reservoir at Leyden Gulch; (3) Build a potable water recycling project; or (4) A combination of these alternatives. Additional alternatives will be considered during the NEPA process.

Scoping meetings will be held at three locations (see **DATES**) to describe the project needs, preliminary alternatives, the NEPA compliance process and to solicit input on the issues and alternatives to be evaluated and other related matters. Written comments will also be requested.

The COE has invited the U.S. Environmental Protection Agency, Federal Energy Regulatory Commission, and the Forest Service to be cooperating agencies in the formulation of the EIS.

Chandler J. Peter,

Project Manager, Regulatory Branch.

[FR Doc. 03–23733 Filed 9–16–03; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 12, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: Extension.

Title: Master Plan for Customer Surveys and Focus Groups.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100,000.

Burden Hours: 50,600.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2308. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–23743 Filed 9–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 12, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Safe and Drug Free Schools

Type of Review: Extension.

Title: Gun-Free Schools Act Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 14,418.

Burden Hours: 30,636.

Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from firearms violations.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2302. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–23744 Filed 9–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129B]

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

For FY 2004, the competition for new awards focuses on projects designed to meet the priority in the PRIORITY section of this application notice.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

Applications Available: September 17, 2003.

Deadline for Transmittal of Applications: October 31, 2003.

Deadline for Intergovernmental Review: December 30, 2003.

Estimated Available Funds: The Administration has requested $42,629,000 for the Rehabilitation Training program for FY 2004, of which an estimated $3,600,000 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: This competition is being conducted in FY 2003 for grants that will be awarded using FY 2004 funds.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11,″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 385.31 and 386.20. The selection criteria to be used for this competition will be provided in the application package for this competition.

Priority: This competition focuses on projects designed to meet the following priority in the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166).

Partnership With the State Vocational Rehabilitation (VR) Agency

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

For FY 2004, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Performance Measures: The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established a set of indicators to assess the effectiveness of the Rehabilitation Training program and will use the following indicator for the Rehabilitation Long-Term Training program projects:

- The percentage of graduates fulfilling their payback requirement through acceptable employment.

Each grantee must report annually on this indicator using the electronic grantee reporting system administered by RSA for this purpose.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling, CFDA No. 84.129B, is one of the programs included in the pilot project. If you are an applicant under Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling at: *http://e-grants.ed.gov.*

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Edward R. Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–0136 or via Internet: *Edward.Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 29 U.S.C. 772.

Dated: September 12, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–23741 Filed 9–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE-FG01–03ER03–25; Office of Nuclear Physics Outstanding Junior Investigator Program

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Nuclear Physics of the Office of Science (SC), U.S. Department of Energy (DOE), invites grant applications for support under the Outstanding Junior Investigator Program (OJI) in nuclear physics. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Applications should be from tenure-track faculty who are currently involved in experimental or theoretical nuclear physics research, the U.S. Nuclear Data (USDNP) program, or accelerator physics research and should be submitted through a U.S. academic institution.

DATES: To permit timely consideration of awards in Fiscal Year 2004, formal applications submitted in response to this notice must be received by November 11, 2003.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, *etc.* Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *helpdesk@pr.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*

FOR FURTHER INFORMATION CONTACT: Dr. Sidney A. Coon, Office of Nuclear Physics, SC–90/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–3613. Fax: (301) 903–3833. E-Mail address: *Sidney.A.Coon@science.doe.gov.* The full text of Program Notice DE-FG01–03ER03–25 is available via the World Wide Web using the following web address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: This is the fifth year of an Outstanding Junior Investigator Program in Nuclear Physics. A principal goal of this program is to identify exceptionally talented nuclear physicists early in their careers and to facilitate the development of their research programs. The proposed research is expected to make an important contribution to the vigor of the U.S. Nuclear Physics program.

Program Funding

The DOE expects to make several awards in Fiscal Year 2004; four awards were made in Fiscal Year 2003. The actual number of awards will be determined by the number of excellent applications and the total amount of funds available for this program. It is anticipated that a total of up to $250,000 will be available in Fiscal Year 2004 for funding the program, subject to availability of appropriated funds, and that awards would be for three to five year terms. At the end of the initial term, these grants may be renewed, subject to appropriate external peer review at the time of renewal, as long as the recipient's tenure status is unchanged.

Research Areas

OJI research applications should be clearly aligned with at least one of the following Office of Nuclear Physics long-term performance measures and be able to contribute to its overall progress.

- Make precision measurements of fundamental properties of the proton, neutron, and simple nuclei for comparison with theoretical calculations to provide a quantitative understanding of their quark substructure.
- Recreate brief, tiny samples of hot, dense nuclear matter to search for the quark-gluon plasma and characterize its properties.
- Investigate new regions of nuclear structure, study interactions in nuclear matter like those occurring in neutron stars, and determine the reactions that created the nuclei of atomic elements inside stars and supernovae.
- Measure fundamental properties of neutrinos and fundamental symmetries by using neutrinos from the sun and nuclear reactors, and by using radioactive decay measurements.

Project Description

Project descriptions should be limited to a maximum of 20 pages (including text and figures) of technical information. In addition, please limit biographical and publication information for the principal investigator to no more than two pages each. Each principal investigator should provide an E-mail address and a list of recent collaborators (*i.e.*, within the last four years). In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, (5) a discussion of the impact of the proposed research on other fields of science, and (6) for projects requiring significant computational resources (*e.g.*, at the National Energy Research Scientific Computing Center), an estimate and justification of the resources that will be required.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, listed in descending order of importance as codified at 10 CFR part 605.10 (d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

Additional criteria, which will be considered: Future promise of the

investigator, and the resources and interest of the sponsoring institution.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Application Guide is possible via the Internet at the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on September 10, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–23736 Filed 9–16–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Uranium Data Program to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by October 17, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–858, EIA–851A, and EIA–851Q, ''Uranium Data Program.''
2. Energy Information Administration.
3. OMB Number: 1905–0160.
4. Three-year extension with revisions of a currently approved collection.
5. Mandatory.
6. EIA's Uranium Data Program collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include uranium exploration, reserves, production, processing, and marketing. The data are used for analyses and publications. Respondents are companies comprising the U.S. uranium industry.

On April 8, 2003, EIA issued a **Federal Register** notice soliciting comments on the uranium surveys. Since that time, EIA has decided to collect most of the information reported on the Forms EIA–851A, EIA–851Q, and EIA–858 as confidential in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (Title V of Pub. L. 107–347). In accordance with CIPSEA, that information would be used exclusively for statistical purposes.

7. Business or other for profit.
8. 1044 hours (98 respondents times × 1.25 responses per year times × 8.5 hours per response).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, September 3, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–23735 Filed 9–16–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–412–003]

Central New York Oil and Gas Company, LLC; Notice of Compliance Filing

September 10, 2003.

Take notice that on September 8, 2003, Central New York Oil and Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 21B and Sixth Revised Sheet No. 103, to be effective July 1, 2003.

CNYOG states that the purpose of its filing is to comply with the Commission's August 29, 2003 Letter Order in this proceeding which accepted CNYOG's revised tariff sheets as satisfactorily complying with an earlier letter order in this proceeding. CNYOG further states that the August 29 Letter Order also directed CNYOG to file revised tariff sheets to delete incorporation by reference of Wholesale Gas Quadrant Standard 5.3.55 and include that standard in the text of CNYOG's tariff.

CNYOG notes that it has served copies of this filing upon the company's

jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23660 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–599–000]

Eastern Shore Natural Gas Company; Notice of Petition for Waiver

September 10, 2003.

Take notice that on September 3, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing a petition for waiver of the North American Energy Standards Board Wholesale Quadrant Standards Electronic Data Interchange processing requirements.

Eastern Shore states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23663 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–56–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

September 10, 2003.

Take notice that on September 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue notes or other evidence of indebtedness in an amount not to exceed $125 million.

The Midwest ISO also requests a waiver from the Commission's competitive bidding requirement at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 10, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–23657 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–600–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 10, 2003.

Take notice that on September 8, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 9, 2003:

Third Revised Sheet No. 53
Fifth Revised Sheet No. 54
Fifth Revised Sheet No. 55
First Revised Sheet No. 56
Fourth Revised Sheet No. 109
Third Revised Sheet No. 110
First Revised Sheet No. 129
Seventh Revised Sheet No. 228

Northwest states that the purpose of this filing is to revise Northwest's tariff to provide additional nomination flexibility after the intraday 2 (ID2) nomination cycle for certain services. Specifically, Northwest states that it proposes: (i) To expand the existing provision that allows two post-ID2 nominations of storage withdrawals under Rate Schedule SGS–2F to also

cover storage injections; (ii) to add a similar post-ID2 nomination provision to Rate Schedule PAL for park and loan services; and (iii) to expand the existing provision allowing two post-ID2 nominations of transportation services related to certain storage withdrawals to also cover nominations for transportation related to certain storage injections, Rate Schedule PAL services or storage services under rate schedules established by third parties for storage facilities connected to Northwest's system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23662 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–429–002]

Transcontinental Gas Pipe Line Corp.; Notice of Compliance Filing

September 10, 2003.

Take notice that on September 4, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Sub First Revised Sheet No. 349A and Second Revised Sheet No. 374F.04. These tariff sheets are proposed to be effective July 1, 2003.

Transco states that the purpose of this filing is to comply with the Commission's Letter Order issued August 25, 2003 in the referenced docket related to Transco's Order No. 587-R compliance filing submitted on July 3, 2003. Specifically, Transco states that, in the August 25, 2003 Order, the Commission accepted Transco's July 3, 2003 filing but required that Transco file revised tariff sheets to eliminate the reference to WGQ Standard 5.3.55 from Section 35 of the General Terms and Conditions (GT&C) and instead include this standard in the text of the tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23661 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–110–001, et al.]

Texas-New Mexico Power Company, et al.; Electric Rate and Corporate Filings

September 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Texas-New Mexico Power Company and Southern New Mexico Electric Company

[Docket No. EC03–110–001]

Take notice that on August 28, 2003, Texas-New Mexico Power Company (TNMP) filed with the Commission journal entries pursuant to TNMP's and Southern New Mexico Electric Company's application for disposition of jurisdictional facilities in Docket No. EC03–110–000.

TNMP states that copies of the journal entries have been provided to all parties who have intervened in this proceeding.

Comment Date: September 17, 2003.

2. Southwestern Public Service Company

[Docket No. EC03–135–000]

Take notice that on September 8, 2003, Xcel Energy Services Inc., on behalf of Southwestern Public Service Company, requested authorization under Section 203 of the Federal Power Act to transfer jurisdictional transmission facilities to NewCorp Resources Electric Cooperative, Inc.

Comment Date: September 29, 2003.

3. Carolina Power & Light Company and Florida Power Corporation

[Docket Nos. ER01–1807–013 and ER01–2020–010]

Take notice that on September 4, 2003, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (CP&L), submitted for filing a refund report as required by Commission Order issued on May 21, 2003 in Docket No. ER01–1807–005, *et al.*, 103 FERC ¶ 61,209.

CP&L states that the report shows the disbursement of energy imbalance penalty revenues and interest to the non-offending customers. CP&L also

states that the refunds were distributed on August 1, 2003 with the exception of the refund to SCANA Energy Marketing which was delivered on August 18, 2003.

Comment Date: September 25, 2003.

4. Mirant Kendall, LLC

[Docket Nos.ER03–998–001 and ER03–563–018]

Take notice that on September 2, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing as directed by the Commission in its August 22, 2003 Order Accepting Certain Bid Cost Input Information for Filing, and Directing Compliance Filing, 104 FERC ¶ 61,219. The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: September 23, 2003.

5. PacifiCorp

[Docket No. ER03–1095–001]

Take notice that on September 4, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a red-lined version of PacifiCorp's First Revised FERC Rate Schedule No. 306 which was previously filed with the Commission on July 21, 2003 in Docket No. ER03–1095–000.

PacificCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: September 25, 2003.

6. Energy Cooperative Association of Pennsylvania

[Docket No. ER03–1165–001]

Take notice that on September 4, 2003, Energy Cooperative Association of Pennsylvania (ECAP) filed a supplement to its application filed on August 6, 2003 for approval of market-based rates as a power marketer. The supplemental information pertains to formatting and presentation of Rate Schedule FERC No. 1.

Comment Date: September 25, 2003.

7. Exelon Corporation

[Docket No. ER03–1279–000]

Take notice that on August 29, 2003, Exelon Corporation submitted for filing Fully Executed Network Service and Network Operating Agreements between the Cities of Batavia and St. Charles, Illinois and Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

Comment Date: September 19, 2003.

8. Allegheny Energy Supply Conemaugh, LLC

[Docket No ER03–1286–000]

Take notice that on September 3, 2003, Allegheny Energy Supply Conemaugh, LLC (Conemaugh) filed a Notice of Cancellation of FERC Electric Tariff, Original Volume No. 1, which was accepted for filing and made effective January 1, 2001 in Docket No. ER01–791–000. Conemaugh requests that the cancellation be made effective September 3, 2003.

Comment Date: September 24, 2003.

9. New York Independent System Operator, Inc.

[Docket No. ER03–1296–000]

Take notice that on September 2, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to the ISO Market Administration and Control Area Services Tariff (the Services Tariff) proposing a revised supplemental supply fee. The NYISO has requested an effective date of May 21, 2003, the effective date of the NYISO's March 21, 2003 filing implementing the Demand Curve proposal.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Services Tariff and upon the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: September 23, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ES03–56–000]

Take notice that on September 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue notes or other evidence of indebtedness in an amount not to exceed $125 million.

The Midwest ISO also requests a waiver from the Commission's competitive bidding requirement at 18 CFR 34.2.

Comment Date: October 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23668 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 10, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License for Approval of Shoreline Management Plan.

b. *Project No:* 2210–090.

c. *Date Filed:* September 3, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2451.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* October 10, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–090) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the Ae-Filing@ link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting Commission approval of a Shoreline Management Plan (plan). The plan would provide guidelines and regulations for shoreline development at Smith Mountain Lake and Leesville Lake. It would also permit APC to permit activities within the project boundary without further Commission approval beyond what its allowed by current license conditions.

l. *Location of the Applications:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23658 Filed 9–16ndash;03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

September 10, 2003.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a license application.

b. *Project No.:* P–2230–033.

c. *Date filed:* September 2, 2003.

d. *Applicant:* City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Project.

f. *Location:* The existing project is located about 5 miles east of the City of Sitka, Alaska on Sawmill Creek (formerly the Medvetcha River).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mike Prewitt, 105 Jarvis Street, Sitka, Alaska 99835; phone (626) 568–0798; e-mail dean@cityofsitka.com.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073; e-mail *Nicholas.Jayjack@ferc.gov*.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *The project consists of:* (1) A211-foot-high arch dam at river mile 2.7 of Sawmill Creek; (2) a 1,225-surface-acre reservoir; (3) a 7,110-foot-long power conduit composed of tunnels and penstocks; (4) one main powerhouse and two smaller powerhouses together containing four generating units with a combined installed capacity of 7.54 megawatts; (5) a switchyard located adjacent to the main powerhouse; (6) a 69-kilovolt, 5-mile-long primary transmission line running from the switchyard to two substations in Sitka; (7) a 470-foot-long, underground transmission line and a 7,700-foot-long underground and overhead transmission line connecting the two smaller powerhouses to the switchyard; and (8) other appurtenant facilities. The project occupies 812 acres of lands administered by the U.S. Forest Service.

l. A copy of the request to use the alternative procedures is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the project number (P–2230) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. City and Borough of Sitka, Alaska (the City) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. The City has also demonstrated that a consensus exists that the use of the alternative procedures is appropriate in this case. The City has submitted a

communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on the request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. The City will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

The City has met with Federal and State resources agencies and the public regarding the proposed project. It is expected that the City will file 6-month progress reports during the alternative procedures process leading to the filing of a license application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23659 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 27, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1273–009.

c. *Date Filed:* November 15, 2002.

d. *Applicant:* Parowan City.

e. *Name of Project:* Center Creek Hydroelectric Project.

f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, gaylord.hoisington@FERC.gov.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Center Creek Hydroelectric Project consists of: (1) a 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23664 Filed 9–16–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0290; FRL–7325–3

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2003–0290, must be received on or before October 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Product Manager, Daniel C. Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0290. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0290. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0290. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0290.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0290. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

A. Products Containing Active Ingredients not Included in any Previously Registered Products

File symbol: 264–IRR. *Applicant*: Bayer CropScience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Aztec 4.67% Granular Insecticide. *Product type*: Insecticide. *Active ingredient*: Phostebupirim at 4.45%; cyfluthrin at 0.22%. *Proposed classification/Use*: None. For control of soil-inhabiting insects in corn.

File symbol: 264–IRE. *Applicant*: Bayer CropScience LP. *Product name*: Aztec 2.1% G Insecticide. *Product type*: Insecticide. *Active ingredient*: Phostebupirim at 2%; cyfluthrin at 0.1%. *Proposed classification/Use*: None. For control of soil-inhabiting insects in corn.

File symbol: 264–IRG. *Applicant*: Bayer CropScience LP. *Product name*: Aztec 2.1% Granular Insecticide. *Product type*: Insecticide. *Active ingredient*: Phostebupirim at 2%; cyfluthrin at 0.1%. *Proposed classification/Use*: None. For control of soil-inhabiting insects in corn.

File symbol: 264–IRR. *Applicant*: Bayer CropScience LP. *Product name*: Tebupirimphos Technical. *Product type*: Insecticide. *Active ingredient*: Phostebupirim at 93%. *Proposed classification/Use*: None. For manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 4, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–23429 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0277; FRL–7319–8]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notice of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136*et seq.*, announces that EPA issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices of Intent to Suspend were issued following issuance of Data Call-In Notices (DCI). The DCIs required registrants of products containing bensulide, boric acid and its salts, and/or methyl nonyl ketone used as an active ingredient to develop and submit certain data. These data were

determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. This Notice includes the text of the Notices of Intent to Suspend issued to Care Flex One-Year Guarantee Company, The Scotts Company, and Voluntary Purchasing Group. As required by section 6(f)(2), the Notice of Intent to Suspend was sent by certified mail, return receipt requested to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Harold Day, Agriculture Division, 2225A, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–4133; fax number: 202–564–0029; e–mail address:*day.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you hold EPA registrations for products that contain bensulide, boric acid and its salts, and/or methyl nonyl ketone. Potentially affected entities may include, but are not limited to pesticide registrants. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the above-mentioned Data Call–Ins and FIFRA, specifically section 3(c)(2)(B). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0277. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*., announces that EPA issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA to Care Flex One-Year Guarantee Company, The Scotts Company, and the Voluntary Purchasing Group. The Notices of Intent to Suspend were issued on July 23, 2003.

III. Text of the Notice to Suspend

The text of the Notices of Intent to Suspend absent specific chemical, product, or factual information issued to Care Flex One-Year Guarantee Company, The Scotts Company, and Voluntary Purchasing Group follows:

United States Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
Washington, DC 20460

November 27, 2002

Certified Mail
Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing_____ for Failure to Comply with the _____ Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice Issued_____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call–In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report – Product List

Attachment II Suspension Report – Requirement List

Attachment III Suspension Report – Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's Procedural Regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must: (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections

which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

An additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: the Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any ex parte communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call–In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance (2225A)
Agriculture Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) for your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call–In Notice or Section 4 Data Requirements Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 3(c)(2)(B) Data Call–In Notice, please contact Frances Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture Division, Office of Compliance.

Attachment I Suspension Report – Product List
Attachment II Suspension Report – Requirement List
Attachment III Suspension Report – Explanatory Appendix

IV. Registrants Receiving and Affected by Notice of Intent to Suspend

The following is a list of products for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date DCI Issued
Care-Flex One-Year Guarantee Company	66680–1	Boric acid and its sodium salts	Care-Flea Home Treatment	2/16/94
The Scotts Company	538–164	Bensulide	Proturf Goosegrass/Crabgrass Control	7/11/00
Voluntary Purchasing Group	7401–439	Methyl nonyl ketone	Fert-Pro Dog-Gon and Cat Repellent	2/28/96

V. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Registant Affected	Active Ingredient	Requirement Name	Guideline Reference Number	Due Date
Care-Flex One-Year Guarantee Company	Boric acid and its sodium salts	90–Day response	---	06/11/94
		Confidential Statement of Formula	---	11/11/94
		8–Month response	---	11/11/94
		Product identity and composition	61–1	11/11/94
		Description starting materials, production & formulation process	61–2(a)	11/11/94
		Discussion of formation of impurities	61–2(b)	11/11/94
		Preliminary analysis	62–1	11/11/94
		Certification of limits	62–2	11/11/94
		Analytical method	62–3	11/11/94
		Color	63–2	11/11/94
		Physical state	63–3	11/11/94
		Odor	63–4	11/11/94
		Density	63–7	11/11/94
		PH	63–12	11/11/94
		Oxidizing or reducing action	63–14	11/11/94
		Explodability	63–16	11/11/94
		Storage stability	63–17	11/11/94
		Viscosity	63–18	11/11/94
		Corrosion characteristics	63–20	11/11/94
		Acute oral toxicity-rat	81–1	11/11/94
		Acute dermal toxicity-rabbit/rat	81–2	11/11/94
		Acute inhalation-toxicity-rat	81–3	11/11/94
		Primary eye irritation-rabbit	81–4	11/11/94
		Primary dermal irritation	81–5	11/11/94
		Dermal sensitization	81–6	11/11/94
		Treatments	95–2,3	11/11/94
		Manmade premises	95–10	11/11/94
		Premises treatment	95–11	11/11/94
		Treatments	95–12	11/11/94
		Stored products treatment	95–13	11/11/94
The Scotts Company	Bensulide	Product identity and composition	158.155	12/30/01
		Description of starting materials	158.160	12/30/01

TABLE B.—REQUIREMENT LIST—Continued

Registant Affected	Active Ingredient	Requirement Name	Guideline Reference Number	Due Date
		Description of production process	158.162	12/30/01
		Description of formulation process	158.165	12/30/01
		Discussion of impurity formation	158.167	12/30/01
		Preliminary analysis	158.170	12/30/01
		Certification of limits	158.175	12/30/01
		Enforcement analytical method	158.180	12/30/01
		Color	63–2	12/30/01
		Physical state	63–3	12/30/01
		Odor	63–4	12/30/01
		Density	63–7	12/30/01
		pH	63–12	12/30/01
		Oxidation/reduction	63–14	12/30/01
		Flammability	63–15	12/30/01
		Explodability	63–16	12/30/01
		Storage stability	63–17	12/30/01
		Viscosity	63–18	12/30/01
		Miscibility	63–19	12/30/01
		Corrosion characteristics	63–20	12/30/01
		Dielectric breakdown voltage	63–21	12/30/01
		Acute oral toxicity	81–1	06/30/01
		Acute dermal toxicity	81.2	06/30/01
		Acute inhalation toxicity	81–3	06/30/01
		Primary eye irritation	81–4	06/30/01
		Primary dermal irritation	81–5	06/30/01
		Skin sensitization	81–6	06/30/01
Voluntary Purchasing Group	Methyl nonyl ketone	Storage stability	63–17 (830–6317)	8/28/00
		Corrosion characteristics	63-20 (830–6320)	8/28/00

VI. Attachment III Suspension Report–Explanatory Appendix

The Explanatory Appendix provides a discussion of the basis for the Notice of Intent to Suspend issued herewith.

A. Bensulide

On July 11, 2000, the Agency issued the Phase 5 ReregistrationEligibility Document Data Call-In Notice pursuant to sections 4(g)(2)(B)and 3(c)(2)(B) of FIFRA which required the registrants of productscontaining bensulide used as an active ingredient to develop and submitcertain data. These data/information were determined to be necessary tosatisfy reregistration requirements of section 4(g). Failure to complywith the requirements of a Phase 5 Reregistration Eligibility DocumentData Call-In Notice is a basis for suspension under section 3(c)(2)(B) ofFIFRA.

The Scotts Company (Scotts) received the Bensulide ReregistrationEligibility Document (RED) on July 20, 2000, as evidenced by a U.S. PostalService domestic return receipt card. Therefore, the 90–day response wasdue on October 20, 2000, and the 8–month response was due on March 20,2001.

In its 90–day response, dated October 30, 2000 (received by theAgency on November 2, 2000), Scotts requested a time extension to submittheir product-specific data. For the acute toxicity date, the companyrequested a time extension until June 30, 2001, and for the productchemistry data, it requested an extension until December 30, 2001. TheAgency in a letter dated December 18, 2000 granted Scotts time extensionrequests.

To date, no product chemistry or acute toxicity data have beensubmitted to the Agency for EPA Registration No. 538–164.Because Scott has failed to submit the

required data, this Notice ofIntent to Suspend is being issued.

B. Boric Acid and its Sodium Salts

On February 16, 1994, the Agency issued the Phase 5 ReregistrationEligibility Document Data Call-In Notice pursuant to sections 4(g)(2)(B)and 3(c)(2)(B) of FIFRA which required the registrants of productscontaining boric acid and its sodium salts used as an active ingredient todevelop and submit certain data. These data/information were determinedto be necessary to satisfy reregistration requirements of section 4(g).Failure to comply with the requirements of a Phase 5 ReregistrationEligibility Document Data Call-In Notice is a basis for suspension undersection 3(c)(2)(B) of FIFRA.

Care-Flex One-Year Guarantee Company received the Boric Acid and ItsSodium Salts Reregistration Eligibility Document (RED) on March 11, 1994,as evidenced by a U.S. Postal Service green card. The Agency has notreceived either the 90–day response or the 8–month response to the Boric Acid and Its Sodium Salts RED for the product EPA Registration Number66680–1. The 90–day response was due on June 11, 1994, and the 8–month response was due on November 11, 1994. The Agency has sent two follow-up letters to the registrant dated April 22, 2002 and August 19, 2002,respectively, and those letters were received by the registrant on April27, 2002, and August 23, 2002, respectively, as evidenced by the U.S.Postal Service green cards. To date, the registrant has not responded.

Because Care-Flex One-Year Guarantee Company has not submitted the requiredDCI/RED responses and data, the Agency is issuing this Notice of Intent toSuspend.

C. Methyl Nonyl Ketone

On February 28, 1996, the Agency issued the Phase 5 ReregistrationEligibility Document Data Call-In Notice pursuant to sections 4(g)(2)(B)and 3(c)(2)(B) of FIFRA which required the registrants of productscontaining Methyl Nonyl Ketone used as an active ingredient to develop andsubmit certain data. These data/information were determined to benecessary to satisfy reregistration requirements of section 4(g). Failureto comply with the requirements of a Phase 5 Reregistration EligibilityDocument Data Call-In Notice is a basis for suspension under section3(c)(2)(B) of FIFRA.

Voluntary Purchasing Group received the Methyl Nonyl KetoneReregistration Eligibility Document Data Call-In Notice (RED) on March 9,1996, as evidenced by a U.S. Postal Service Domestic return receipt card.The 90–day response was received on June 26, 1996.

The Agency completed its review of the product chemistry data onFebruary 28, 2002. The data requirements for Guideline 63–17 (StorageStability) and Guideline 63–20 (Corrosion Characteristics) were notsatisfied. The interim report submitted by Voluntary Purchasing Groupby letter dated February 18, 2002 related to an unacceptable study and thedata requirements remain unsatisfied. In an Agency letter dated March 6,2002 to Michael Jackson (consultant for Voluntary Purchasing Group) a timeextension was granted since a new study had been reportedly initiated inDecember 2001, according to information provided to the Agency by Mr.Jackson. The new deadline for submission of the storage stability andcorrosion characteristics data was January 2003. Subsequently, theAgency sent a letter dated January 15, 2003, as no data addressing thesetwo outstanding requirements had been received as of that date. Thatletter, which was received by Mr. Jackson on January 21, 2003 (asevidenced by a U.S. Postal Service domestic return receipt card), informedhim and his client that a Notice of Intent to Suspend would beinitiated if the outstanding data were not received by January 31, 2003.

To date, the Agency has not received the required data. Becausethe required data have not been received, the Agency is issuing thisNotice of Intent to Suspend.

VII. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136*et seq.*

List of Subjects

Environmental protection.

Dated: September 4, 2003.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–23754 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0268; FRL–7321–8]

Dinocap; Availability of Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 30–day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient dinocap, which consists of a voluntary cancellation of all United States (U.S.) product registrations. The registrant for dinocap, Dow AgroSciences, LLC, has indicated their intention to retain the existing tolerances for apples and grapes for import purposes. EPA finds that there is a reasonable certainty that no harm will result from dinocap use on apples and grapes imported into the U.S.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0268, must be received on or before October 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0268. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. To access RED documents and RED fact sheets electronically, go directly to the Office of Pesticide Program's Home Page at *http://cfpub.epa.gov/oppref/rereg/status.cfm?show=rereg*.

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA Dockets. EPA's policy is that copyrighted material will not be placed in EPA Dockets but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA Dockets. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA Dockets. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA Dockets.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA Dockets as EPA receives them and without change, unless the comment contains copyrighted material, CBI or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA Dockets. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or if additional information is needed regarding the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA Dockets. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA Dockets to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0268. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0268. In contrast to EPA Dockets, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA Dockets, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA Dockets.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0268.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501, Attention: Docket ID number OPP–2003–0268. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA Dockets or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA Dockets. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA Dockets without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency has issued a RED for the pesticide active ingredient dinocap. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The RED for dinocap consists of a voluntary cancellation of all products registered in the U.S. Because the registrant, Dow AgroSciences, LLC, has expressed interest in retaining existing tolerances for apples and grapes for import purposes, the RED presents only a dietary risk assessment for those uses and specifically addresses the data requirements for support of the import tolerances. The RED also provides background information on the pesticide registration, reregistration and tolerance reassessment, an overview of the uses and health effects associated with dinocap and a summary of what data are required to support the tolerances on apples and grapes imported into the U.S., in the absence of a U.S. registration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED for dinocap as a final document with a 30–day public comment period that is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. If any comment significantly affects this RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What Is the Agency's Authority for Taking This Action?

The legal authority for this RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 26, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–23276 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0184; FRL–7324–7]

Molinate; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests from Syngenta Crop Protection, Inc. and Helm Agro US, Inc. to voluntarily cancel the registrations for all of their products containing *S*-ethyl hexahydro-1H-azepine-1-carbothioate (molinate). At the close of the comment period, EPA intends to issue an order granting these cancellation requests, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests, or the requests have been withdrawn.

DATES: Comments must be received by October 17, 2003. Unless the Agency receives substantive comments within the comment period that would merit its further review of these requests, or the requests have been withdrawn by October 17, 2003, EPA intends to issue an order canceling these registrations at the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025, e-mail address: *livingston.wilhelmena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0184. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the

Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but, will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statue.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Docket.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/* and follow the online instructions for submitting comments. Once in the system select ''search,'' and then key in docket ID number OPP–2003–0184. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0184. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0184.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0184. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit any information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM as CBI the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's

electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from Syngenta Protection Crop, Inc. and Helm Agro US, Inc. to cancel the registration of 14 pesticide products registered under section 3 or 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The 14 registrations constitute all registrations held by Syngenta Crop Protection, Incorporated and Helm Agro US, Incorporated of products containing *S*-ethyl hexahydro-1H-azepine-1-carbothioate (molinate). These requests are submitted pursuant to section 6(f) of FIFRA.

On June 2, 2003, Syngenta Crop Protection, Inc., and on August 7, 2003, Helm Agro US, Inc. submitted a letter to EPA requesting cancellation, effective June 30, 2008, of the registrations of all their molinate products, and to modify the terms and conditions of its molinate registration until the cancellation is effective. Syngenta and Helm also requested that the Administrator waive the 180–day waiting period under FIFRA section 6(f)(1)(C)(ii).

Molinate (*S*-ethyl hexahydro-1H-azepine-1-carbothiate) is a thiocarbamate herbicide registered for use primarily for the control of water grass in rice. Rice is grown in California and the south central/south eastern states of Arkansas, Louisiana, Missouri, Texas, and Tennessee. The registrations subject to the requests for cancellation are listed in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration number	Product name	Chemical name
100–981	Riceco Molinate Technical	Molinate
100–982	Riceco Touche	Molinate
100–983	Molinate 15G	Molinate
100–1021	Ordram 8–E An Emulsufiable Liquid Herbicide	Molinate
100–1036	Arrosolo 3–3E	Molinate
100–1039	Ordram 15–G	Molinate
100–1040	Ordram Techncial Herbicide	Molinate
100–1102	Ordram 15–GM Rice Herbicide	Molinate
74530–7	Molinate Technical	Molinate
CA77015900	Ordram 8–E An Emulsufiable Liquid Herbicide	Molinate
CA84017200	Ordram 8–E An Emulsufiable Liquid Herbicide	Molinate
CA85005300	Ordram 8–E An Emulsufiable Liquid Herbicide	Molinate
TX81002600	Ordram 8–E An Emulsufiable Liquid Herbicide	Molinate
TN93000700	Ordram 15–G	Molinate

At the close of the comment period, EPA intends to issue an order granting these cancellation requests, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests, or the requests have been withdrawn. Users of these pesticides or anyone else desiring the retention of a registration should send in their comments to EPA. In addition, they may wish to contact the applicable registrant directly.

Table 2 of this unit includes the name and address of record for the registrants of the products in Table 1 of this unit:

TABLE 2. —REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company number	Company name and address
100	Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300
74530	Helm Agro US, Inc., Nordkanalstrasse 28 D–20097, Hamburg, Germany

A. Modification of the Terms and Conditions of the Molinate Registrations

The 2002 sales level of the molinate active ingredient will be the maximum amount that Syngenta and Helm will sell or distribute in 2004, 2005, and 2006. Syngenta and Helm may not sell or distribute any more than 75% of the 2002 sales levels in the year 2007, and sell or distribute more than 50% of the 2002 sales levels in the year 2008.

Syngenta and Helm will provide annual production/sales reports to the Agency beginning in the year 2004 through 2009. Syngenta and Helm will also provide inventory reports for the years 2007, 2008, and 2009. These

reports will be submitted by September 30 of each year to the Chemical Review Manager for molinate.

Failure by either registrant to comply with the sale or distribution limits contained in the molinate registration constitutes grounds for immediate cancellation of the registration without opportunity for a hearing.

III. What Is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In the case of minor agricultural uses, section 6(f)(1)(c) of FIFRA provides for a 180–day comment period under certain circumstances. In this case, both molinate registrants requested that EPA waive the 180–day comment period. Accordingly, pursuant to section 6(f)(1)(c)(ii) of FIFRA, EPA is waiving the 180–day comment period, and will provide interested parties 30 days to comment on the action.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 17, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements. Any person, including the registrant, who wants to support the continued registration of molinate, must fulfill all outstanding data gaps. In addition, EPA must find that molinate is eligible for reregistration.

V. Provisions for Disposition of Existing Stocks

The Agency intends to issue a cancellation order following the consideration of all comments received during the comment period, unless the comments warrant further review of this request. Any cancellation order issued in response to this request will have an expected effective date of June 30, 2008.

After that date, Syngenta and Helm may not sell or distribute any molinate products except as detailed in the cancellation order as follows. Syngenta and Helm will be permitted to distribute the molinate active ingredient in 2009 for the purposes of facilitating usage by August 31, 2009. No use of products containing molinate will be permitted after the 2009 growing season (August 31, 2009).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 4, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–23430 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7560–6]

Stallings Salvage Superfund Site, Monroe, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Estate of Paul Stallings, by and through its Executor, Morris Stallings, as Executor of the Estate of Paul Stallings; Morris Stallings as attorney in fact for Paul Stallings under the durable power of attorney dated June 2, 1994; and Morris Stallings for recovery of past response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Stallings Salvage Superfund Site located in Monroe, Union County, North Carolina. EPA will consider public comments on the proposed settlement until October 17, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, Waste Management Divison, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 2, 2003.

Rosalind Brown,

Chief, Superfund Enforcement & Information Mgmt Branch, Waste Management Division.

[FR Doc. 03–23746 Filed 9–16–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–2867]

Media Bureau To Terminate Temporary Broadcast Station Application Freeze; Revised Processing Guidelines Announced

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission is revising the processing guidelines for broadcast station applications filed on Forms 301, 314, and 315, reinstating the June 2002 versions of Forms 301, 314 and 315, and terminating the temporary application filing freeze. The United States Court of Appeals for the Third Circuit issued an *Order* staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003, 68 FR 48265 (August 5, 2003).

DATES: Effective September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle or Nina Shafran of the Audio Division, Media Bureau, at (202) 418–2700, or Barbara Kreisman or Jim Brown of the Video Division, Media Bureau, at (202) 418–1600.

SUPPLEMENTARY INFORMATION: On September 3, 2003, the United States Court of Appeals for the Third Circuit issued an Order [1] staying the effectiveness of the new media ownership rules adopted by the Commission on June 2, 2003.[2] The Court ordered ''that the prior ownership rules remain in effect pending resolution of these proceedings.''[3] In response, the Commission established a freeze on the filing of certain

[1] *Prometheus Radio Project* v. *FCC,* No. 03–3388 (3d Cir. Sept. 3, 2003) (per curiam) (order granting motion to stay effective date of FCC's new ownership rules) (''*Order*'').

[2] *Report and Order* in MB Docket No. 02–277 and MM Docket Nos. 01–235, 01–317, and 00–244 (adopted June 2, 2003) (published in summary form in the **Federal Register**, 68 FR 48265 (August 5, 2003)) (''*Report and Order*'').

[3] *Order* at 3.

commercial broadcast station applications and amendments.[4]

The *Order* requires that the Commission process broadcast station applications under the prior ownership rules. Accordingly, the Media Bureau is issuing this Public Notice to announce revised processing guidelines for broadcast station applications filed on Forms 301, 314, and 315. The prior versions of these forms will be effective and available for use upon publication of this notice in the **Federal Register**. The temporary application filing freeze will be terminated simultaneously with this **Federal Register** publication.

Applications filed on June 2002 Versions of Forms 301, 314, and 315: The staff has resumed the processing of these commercial radio and television station applications. Applicants are not required to demonstrate compliance with the ownership rules adopted in the *Report and Order.* The invitation to file amendments demonstrating compliance with these rules is withdrawn.[5]

Applications Filed on July 2003 Versions of Forms 301, 314, and 315: Commercial and noncommercial educational station applications filed on or after August 14, 2003, on the July 2003 versions of these forms must be amended by resubmitting complete applications on the June 2002 versions of these forms. Applicants should promptly submit these filings following publication in the **Federal Register** of this public notice. Waiver requests must be submitted for applications that do not comply with the prior ownership rules. The failure to submit a waiver request will result in an application's dismissal. All applications will retain originally assigned file numbers.

New Applications on Forms 301, 314, and 315: Commercial and noncommercial educational broadcast station applicants must use June 2002 versions of Forms 301, 314, and 315. The Media Bureau will begin accepting new applications on these forms following publication in the **Federal Register** of this Public Notice.

Noncommercial Educational Station Application Freeze: To facilitate the transition to the June 2002 versions of the affected forms, the Media Bureau will no longer accept any applications or amendments filed on the July 2003 versions of Forms 301, 314, and 315. This freeze is effective immediately, September 17, 2003. Accordingly, the current temporary filing freeze is extended to include all noncommercial educational radio and television station applications filed on these forms.

FCC Notice Required by the Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it has approval from the Office of Management and Budget for the collection(s) of information contained in FCC Forms 301, 314, and 315.

The OMB Control Numbers are: 3060–0027 (FCC Form 301, June 2002), 3060–0031 (FCC Form 314, June 2002), and 3060–0032 (FCC Form 315, June 2002). The annual reporting burden for each of these collection(s) of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data and completing and reviewing the collection of information, are estimated to be: FCC Form 301: 3,370 respondents, 37 to 121 hours per annum, for a total annual burden of 7,427 hours, and $35,485,300 in total annual costs; FCC Form 314: 1,591 respondents, 12 to 48 hours per annum, for a total annual burden of 2,546 hours, and $12,236,878 in total annual costs; and FCC Form 315: 1,591 respondents, 12 to 48 hours per annum, for a total annual burden of 2,546 hours, and $12,236,878 in total annual costs. If you have any comments on these burden estimates, or how we can improve the collection(s) and reduce the burden(s) they cause you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number(s): 3060–0027, 3060–0031, and/or 3060–0032, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collection(s) via the Internet if you send them to *Leslie.Smith@fcc.gov* or call (202) 418–0217.

Under 5 CFR Section 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number. The OMB Control Numbers are 3060–0027 (FCC Form 301), 3060–0031 (FCC Form 314), and 3060–0032 (FCC Form 315).

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–23792 Filed 9–16–03; 8:45 am]

BILLING CODE 6712–01–P

[4] Currently, no application or amendment may be filed on Form 301, 314, or 315 by a commercial applicant or licensee.

[5] *See FCC Forms 301, 314, and 315 Approved and Available For Use; Media Bureau Announces End to Freeze on the Filing of Form 301, 314, and 315 Applications and Amendments, Public Notice,* DA 03–2642 (rel. Aug. 14, 2003) (permitting parties to file amendments demonstrating compliance with new multiple ownership rules).

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 October 10, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The Pennsylvania State Banking Company, Camp Hill, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Pennsylvania State Bank, Camp Hill, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mid–Missouri Bancshares, Inc., Springfield, Missouri; to acquire at least 96.3 percent of the voting shares of Town and Country Bank of the Ozarks, Republic, Missouri.

Board of Governors of the Federal Reserve System, September 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–23665 Filed 9–16–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 011 0222]

South Georgia Health Partners, L.L.C., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 9, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Steven Osnowitz, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2746.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 9, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/09/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, and agreement containing a proposed consent order with South Georgia Health Partners, L.L.C. (''SGHP''), five other physician-hospital organizations (''PHOs''), and three independent practice associations (''IPAs''). The agreement settles charges that these nine respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among SGHP's members to fix prices and other terms of dealing with employers, health insurance firms, and other third-party payors (''payors'') for physician and hospital services, and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

According to the Commission compliant, SGHP is a for-profit PHO, the membership of which includes competing hospitals and competing physicians. All its members are located in a region of south Georgia. Through SGHP, the members bargain collectively for higher prices for hospital and physician services. SGHP consists of approximately 500 physicians, as well as 15 hospitals with a total of over 2,200 staffed beds. With one exception, SGHP's member hospitals are the sole hospitals in each of the 15 counties where they are located. SGHP's member physicians constitute approximately 90% of all physicians who practice in the area.

Five respondents—each itself a PHO (the ''Owner PHOs'')—own equal shares of SGHP: Health Alliance of the South, South Georgia PHO, Coastal Plains Health Alliance, Colquitt County PHO, and Satilla HealthNet. Each has equal representation on SGHP's Board of Directors. The three IPA respondents—Qualicare Physicians Association, South Georgia Physician Network, and Colquitt County Physicians—are the physician components of three of the owner PHOs. The complaint alleges that these eight respondents, with and through SGHP, agreed to fix physician and hospital prices.

Physicians sometimes join IPAs, and physicians and hospitals sometimes form PHOs, to market jointly their health care services to payors or engage in other collective activities. Such organizations may not lawfully orchestrate agreements among their members on the prices to demand from payors, unless the members are integrated in a manner that creates significant efficiencies such as lower costs, and unless the price agreements are reasonably necessary to obtain those efficiencies. According to the compliant, neither SGHP, nor any other respondent, engaged in such integration so as to justify their price-fixing activities.

The complaint further alleges that, with respect to physician services,

SGHP required payors to meet a single, fixed price list applicable to all physician members. The prices that SGHP demanded are substantially higher than the physicians could have obtained by negotiating unilaterally. When payors approached them directly in efforts to engage in contract negotiations, SGHP's physician members repeatedly refused to deal unilaterally, and instructed the payors to negotiate with SGHP for collective contracting purposes.

With respect to hospital services, the complaint alleges that SGHP orchestrated agreements among its hospital members not to discount from their respective list prices by an amount greater than 10%, and repeatedly refused payor requests during contract negotiations for larger discounts for specific SGHP member hospitals or combinations of member hospitals. SGHP successfully resisted payor attempts to contract separately with individual member hospitals. It also fostered agreements among its members to refuse payor requests for hospital services payable on the basis of a per diem (set charge per day for a particular inpatient service) or per case (set charge for a particular type of case, including ''diagnosis related groups'' or ''DRGs''). These are methods that can make pricing more certain and provide incentives for hospitals to use resources more efficiently.

SGHP also allegedly orchestrated agreements among its member hospitals to participate only in SGHP's contract arrangements with payors. A hospital that wanted to deal with a payor outside of SGHP needed authorization from 75% of SGHP's board to do so. SGHP further required that, if the board authorized a member hospital to contract independently from SGHP, the hospital not discount from its list prices by more than 10%—unless the hospital provided that larger discount to every payor with which it was under contract through SGHP. This agreement created a substantial disincentive for any member hospital to deviate from the SGHP price agreement, because, by lowering prices to one payor, the hospital would have to do so for all payors that had contracts with the hospital.

Eight of the nine respondents are for-profit entities. The other respondent, Satilla HealthNet, is a non-profit corporation, but one that engages in substantial activities that confer pecuniary benefits on its for-profit physician members. The Commission has jurisdiction, therefore, over all respondents.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence, while allowing respondents to engage in legitimate conduct that does not impair competition. It is similar to many previous consent orders that the Commission has issued to settle charges relating to unlawful agreements to raise prices. The proposed order applies to both hospital and physician services.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II and III. Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten to refuse a deal with payors; (3) on what terms to deal with any payor, or (4) not to deal individually with any payor, or not to deal with any proper through arrangement other than respondents.

Paragraph II.B prohibit respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B Paragraph II.D prohibits them from inducing anyone to engage in any action prohibited by Paragraph II.A through II.C.

Paragraph II also contains a proviso intended to clarify certain types of agreements that Paragraph II does not prohibit, except as to SGHP. It provides that nothing in Paragraph II prohibits the Owner PHO and IPA respondents from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a ''qualified risk-sharing joint arrangements'' or a ''qualified clinically-integrated joint arrangements.'' Such arrangements must not include another Owner PHO or IPA, and they must not be exclusive. As discussed below in connection with Paragraph IV, each respondent is required to notify the FTC about such an an arrangement before negotiating on behalf of its members or before its members jointly discuss any terms of dealing with a payor.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions. First, all physician or hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician or hospital participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or condictions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

As defined in the proposed order, a ''qualified clinically-integrated joint arrangement'' also must satisfy two conditions. First, all physician or hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Paragraph III is substantially identical to Paragraph II, except that it applies to the provision of hospital, rather than physician, services.

Paragraph IV requires an Owner PHO or IPA respondent that has formed a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional regarding the arrangement.

Paragraphs V.A., V.B, and V.C set out the requirement that SGHP or Owner PHO respondents send the Order, the Complaint, and a letter of notice to each payor with which SGHP or an Owner PHO has been in contact since January 1, 1995. This notice provision, set out in Appendix A, will inform payors that any contract with SGHP may be terminated at the payor's written request, per Paragraph V.B. Absent such written request, however, Paragraph V.B. provides that all such contracts will terminate upon their termination or renewal date. This provision is intended to eliminate the effects of respondents' anticompetitive concerted actions.

The remaining provisions of Paragraph V and Paragraphs VI through VIII of the proposed order impose obligations on respondents with respect to distributing the proposed complaint and order to SGHP's members and to other specified persons, and reporting information to the Commission.

The proposed order will expire in 20 years.

By direction of the Commission, Commissioner Harbour not participating.

Donald S. Clark,

Secretary.

[FR Doc. 03–23755 Filed 9–16–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–114]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: HIV Counseling and Testing System—New—The National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC) proposes to start collection of a standard set of core variables for monitoring the HIV counseling, testing, and referral program using a new browser-based program evaluation and monitoring system. This request is for a 3-year clearance.

CDC funds cooperative agreements for 65 HIV prevention projects (50 states, 6 cities, 7 territories, Washington, DC, and Puerto Rico) and approximately 50 community based organizations to support HIV counseling, testing, and referral programs. HIV counseling, testing, and referral services in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health facilities have been described as a primary prevention strategy of the national HIV prevention program. The funded public health departments and community based organizations have increased the provision of HIV counseling, testing, and referral activities to those at increased risk for acquiring or transmitting HIV, as well as minority communities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention programs conducted under HIV Prevention cooperative agreements. HIV counseling, testing, and referral services are a vital component of HIV prevention programs. Without data to monitor and evaluate the impact of HIV counseling, testing, and referral programs, HIV prevention program priorities cannot be assessed and improved to prevent further spread of the epidemic. CDC needs minimal information from all grantees describing services provided for at-risk persons. The HIV Counseling and Testing System specify a minimal core dataset that will be used by all grantees. These data are routinely captured as part of provision of services.

Grantees will be able to use either the CDC browser-based system or their own unique electronic system to collect and submit this information. All reporting to the CDC will take place electronically. Grantees may develop their own paper forms to assist data collection. Electronic systems, *e.g.*, Personal Digital Assistants (PDAs), may be used as appropriate to the setting. Completing the initial data submission will take approximately 2 minutes per electronic record. Approximately two (2) million records annually are expected from over 11,000 directly and indirectly funded grantee facilities. Once data are entered into the browser-based system, additional data collection efforts are not required. The total burden hours are 66,733 hours annually. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CDC Grantees	11,000	182	2/60	66,733
Total	11,000			66,733

Date: September 10, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, , Centers for Disease Control and Prevention.

[FR Doc. 03–23676 Filed 9–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Conceptual Discussions for Quality Assurance Standards Module for Respiratory Protective Equipment.

Date and Time: October 16, 2003; 3 pm–5 pm.

Place: The Radisson Hotel at Waterfront Place, 2 Waterfront Place, Morgantown, West Virginia.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 175 people. Interested parties should make hotel reservations directly with the Radisson Hotel at

Waterfront Place (304/296–1700 or 1–800–333–3333) before the cut-off date of October 2, 2003. The following special group rates have been negotiated for meeting guests: $66.00 per night for federal guests and $79.00 per night for non-federal guests. The NIOSH National Personal Protective Technology Laboratory (NPPTL) Public Meeting must be referenced to receive these special rates. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*npptlevents@cdc.gov*) or fax (304–285–4459) to the NIOSH Event Management Office. A registration form may be obtained from the NIOSH Homepage (*www.cdc.gov/niosh*) by selecting Conferences and then the event.

An opportunity to make presentations regarding the conceptual quality assurance standards module will be given. Requests to make such presentations at the public meeting should be made by e-mail (*npptlevents@cdc.gov*) to the NIOSH Event Management Office. All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH Event Management will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer. Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513/533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than November 16, 2003, and should reference Docket Number NIOSH–001 in the subject heading.

Purpose: NIOSH has initiated conceptual discussions for quality assurance standards for respiratory protective equipment. The concepts for the update of 42 CFR part 84 to address quality assurance provisions, establish fees, improve labels and update certain administrative provisions were presented in a public meeting held on June 25, 2003. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain a copy of the quality assurance concept paper from the NPPTL web site, address: *www.cdc.gov/niosh/npptl.* The July 21, 2003, concept paper and the information presented at the June 25, 2003, public meeting will be used as the basis for discussion at the October 16, 2003, public meeting. Responses to the comments received since the June 25, 2003, meeting will also be discussed. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators for use in occupational settings. International trade has led to changes in accepted quality assurance practice in manufacturing environments throughout the world. In attempting to keep respirator standards abreast of current manufacturing practice, NIOSH has met with the public and respirator manufacturers to receive input on the development of new respirator quality assurance standards. NIOSH hosted the most recent of these public meetings on June 25, 2003, where concepts developed up to that date were presented.

CONTACT FOR ADDITIONAL INFORMATION: NIOSH Event Management, 3610 Collins Ferry Road, PO Box 880, Morgantown, West Virginia 26507–0880, Telephone 304–285–4750, Fax 304–285–4459, E-mail *npptlevents@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–23685 Filed 9–16–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health; Notice of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Conceptual Discussions for Powered Air Purifying Respirator Standards Development Efforts Used for Respiratory Protection Against Chemical, Biological, Radiological, and Nuclear (CBRN) Agents.

Date and Time: October 16, 2003; 9 a.m.–3 p.m.

Place: The Radisson Hotel at Waterfront Place, 2 Waterfront Place, Morgantown, West Virginia.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 175 people. Interested parties should make hotel reservations directly with the Radisson Hotel at Waterfront Place (304/296–1700 or 1–800–333–3333) before the cut-off date of October 2, 2003. The following special group rates have been negotiated for meeting guests: $66.00 per night for Federal guests and $79.00 per night for non-Federal guests. The NIOSH National Personal Protective Technology Laboratory (NPPTL) Public Meeting must be referenced to receive these special rates. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*npptlevents@cdc.gov*) or fax (304–285–4459) to the NIOSH Event Management Office. A registration form may be obtained from the NIOSH homepage (*www.cdc.gov/niosh*) by selecting Conferences and then the event.

An opportunity to make presentations regarding the conceptual discussions of standards and testing processes for powered air purifying respirator standards suitable for respiratory protection against CBRN Agents will be given. Requests to make such presentations at the public meeting should be made by e-mail (*npptlevents@cdc.gov*) to the NIOSH Event Management Office. All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. After reviewing the requests for presentations, NIOSH Event Management will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the

opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513/533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than November 16, 2003, and should reference Docket Number NIOSH–010 in the subject heading.

Purpose: NIOSH will initiate conceptual discussions of standards and testing processes for powered air purifying respirator standards suitable for respiratory protection against CBRN Agents. NIOSH, along with the U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the powered air purifying respirator CBRN standard. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain a copy of the powered air purifying respirator CBRN concept paper, as well as earlier versions of other concept papers used during the standard development effort, from the NPPTL Web site, address: *www.cdc.gov/niosh/npptl.* The September 15, 2003, concept paper will be used as the basis for discussion at the public meeting, as well as forming the basis for the new powered air purifying respirator CBRN statement of standard. The continuing threat of acts of terrorism has created an urgent awareness of domestic security and preparedness issues. Municipal, State, and Federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resources requirements for coping with such events. The Federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, the National Fire Protection Association, and the Occupational Safety and Health Administration entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators. NIOSH, SBCCOM, and NIST hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; October 16 and 17, 2002; April 29, 2003; and June 25, 2003, presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings.

For Further Information Contact: NIOSH Event Management, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone 304–285–4750, Fax 304–285–4459, E-mail *npptlevents@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–23686 Filed 9–16–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Final Recommendations for Protecting Human Health from Potential Adverse Effects of Exposure to Agents GA (Tabun), GB (Sarin), and VX

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

ACTION: Notice of final recommendations for protecting human health from potential adverse effects of exposure to agents GA, GB, and VX.

SUMMARY: Agents GA, GB, and VX are stored and are in the process of being destroyed by the Department of Defense (DoD). Public Law 99–145 (50 U.S.C. 1521) mandates that all unitary (self-contained) lethal chemical munitions be destroyed. Public Law 91–121 and Public Law 91–441 (50 U.S.C 1512) mandate that the Department of Health and Human Services (DHHS) review DoD plans for disposing of these munitions and make recommendations to protect public health.

EFFECTIVE DATE: January 1, 2005. An implementation period is necessary to allow the DoD to make program adjustments and allow time for changes to environmental permits as required.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Joe, Acting Chief, Chemical Demilitarization Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, M/S F–16, Atlanta, Georgia 30341.

SUPPLEMENTARY INFORMATION: On January 8, 2002, DHHS, CDC published proposed ''Airborne Exposure Limits for Chemical Warfare Agents GA (tabun), GB (sarin) and VX'' in the **Federal Register** (Vol. 67, No. 5, Pages 894–901, Tuesday, January 8, 2002), seeking public comment. This notice discusses major comments received, describes decisions regarding the public comments, and states the final recommendations. CDC received comments from the U.S. Army, the Agency for Toxic Substances and Disease Registry (ATSDR), the CDC's National Institute for Occupational Safety and Health (NIOSH), State of Utah, U.S. Army contractors, and two individuals. The comments fell into the following general categories: Assumptions used in the risk assessment, selection of uncertainty factors, determination of the relative potency factor for the VX exposure limits, and technical feasibility of air monitoring at the lower exposure limits.

The key comments potentially impacting CDC's recommendations are discussed below. The U.S. Army recommended that adjustment in the risk assessment algorithm for breathing rate be eliminated because the critical endpoint in deriving the exposure limits is miosis, a clinical sign that is recognized as a local effect on the muscles of the iris of the eye. This biologic endpoint is widely considered to be a direct effect of the nerve agent vapor on the surface of the eye (not related to breathing rate). Scientists from CDC/NIOSH however, indicated that the data do not completely rule out the potential contribution of inhaled agent to the miosis effect. The weight of the scientific data appears to support the Army's recommendation on this matter, and CDC has decided to eliminate the breathing rate adjustment. Eliminating the breathing rate adjustment increases the worker population limit (WPL) by a factor of slightly more than two. No significant change in the general population limit (GPL) would occur by eliminating the breathing rate adjustment.

In the derivation of the WPL for GB, CDC/NIOSH experts recommended that an additional uncertainty factor of three be added to account for individual worker variability. Although workers

are medically screened, the recommendation is a reasonable public health decision. CDC therefore has incorporated the additional uncertainty factor of three into the risk assessment algorithm. Making this adjustment lowers the exposure limits by a factor of three. This adjustment and elimination of the breathing rate factor suggested above, essentially cancel each other. In the derivation of the VX exposure limits by using relative potency, the Army questioned the use of a relative potency of 12 with the application of a modification factor of three for the incomplete VX data set. The application of a relative potency of 12 with a modifying factor of three effectively resulted in a relative potency of 36 between the calculated exposure limits for GB and VX. As discussed in the January 8, 2002, **Federal Register** proposal, the relative potency factor of 12 was based on a 1971 British study that measured the ability of VX to cause 90 percent pupil constriction in rabbits. Because the critical effect in the study used to derive the GB exposure limit was miosis, CDC believes that miosis was appropriate to use as the health effect in determining the relative potency of VX. CDC/NIOSH experts and the State of Utah supported the proposed relative potency of 12 with a modifying factor of three. Therefore, CDC is retaining its relative potency assumptions for deriving the VX exposure limits. As discussed in the January 8, 2002 **Federal Register** proposal, CDC adjusted the VX GPL because available air-monitoring methods do not reliably detect VX at the calculated value of 3×10^{-8} mg/m^3. In the adjustment, CDC assumed that potential exposure would be identified and corrected within three days, precluding chronic exposure. Several people who provided comments pointed out that a similar adjustment also could have been made for the GB GPL. CDC recognizes that the assumptions used to derive the GPLs for GB and VX differ. Indeed this adjustment could be applied to the GB exposure limits; however, the air-monitoring technology is currently functioning near the recommended level. CDC recommends no upward adjustment of the GB exposure limits; this recommendation is consistent with the accepted industrial hygiene practice of keeping exposure to the minimum practicable level. The derivation of the VX exposure limits may be biased low because of the inadequate VX toxicity database. CDC believes that reliable air monitoring is a crucial aspect for implementing the exposure limits. Although CDC would have preferred a better toxicity database for VX, as well as improved air-monitoring methods for VX, these items are not currently available. Consequently, CDC is not further adjusting the final recommendation to the GPL for VX. However, CDC will reevaluate the VX exposure limits in the future if significant new VX toxicity data are available for setting exposure limits, new risk assessment evaluation methods are demonstrated superior to methods used herein, or substantive technological advances in air monitoring methods are made.

Army contractors and CDC/NIOSH experts expressed concerns about the technical feasibility of meeting the new exposure limits. On the bases of these comments, CDC has adjusted the VX short-term exposure limit (STEL) to 1×10^{-5} mg/m^3 but added the provision that excursions to this special VX STEL should not occur more than once per day (in the typical STEL, four excursions per day are allowed). A lower STEL value would have required a longer response time for near real-time instruments; the recommended STEL is a result of balancing the detection capabilities and response time. A shorter instrument response time associated with the recommended STEL will minimize exposures. This adjustment to the VX STEL should not affect worker health. To account for other technical feasibility concerns, CDC recommends that the GB and VX STEL be evaluated with near-real-time instrumentation, whereas the GB and VX WPLs and GPLs may be evaluated with longer-term historical air monitoring methods. CDC further recommends that, in implementing the WPLs, STELs and GPLs, specific reduction factors for statistical assurance of action at the exposure limits are not needed because of safety factors already built into the derivation of the exposure limit.

This recommendation assumes that the sampling and analytical methods are measuring within ±25% of the true concentration 95% of the time. If this criterion is not met, an alarm level or action level below the exposure limit may be required. The Army recently indicated to CDC that the exposure limits as listed and implemented in this announcement are technically feasible to detect with the instrumentation and methods currently in use.

However, whether the agent destruction sites can monitor at these exposure limits and still meet current quality control standards has not been determined. To allow the Army to implement program changes, regulatory adjustments, and to evaluate quality control issues, the final recommended exposure limits will become Effective January 1, 2005.

Final Recommendations: CDC presents final recommendations for airborne exposure limits (AELs) for the chemical warfare agents GA (tabun or ethyl N,N-dimethyl-phosphoramidocyanidate, CAS 77–81–6); GB (sarin or O-isopropyl-methylphosphonofluoridate, CAS 107–44–8); and VX (O-ethyl-S-(2-diisopropylaminoethyl)-methylphosphonothiolate, CAS 50782–69–9). CDC based its recommendations on comments by scientific experts at a public meeting convened by CDC on August 23–24, 2000, in Atlanta, Georgia; the latest available technical reviews; and the risk assessment approach frequently used by regulatory agencies and other organizations.

Additionally, CDC reviewed the substantial background information provided in the recent U.S. Army evaluations of the airborne exposure criteria for chemical warfare agents. AELs for chemical warfare agents GA, GB, and VX were reevaluated by using the conventional reference concentration risk assessment methodology for developing AELs described by the U.S. Environmental Protection Agency. This methodology is considered conservative; however, the calculated exposure limits are neither numerically precise values that differentiate between nonharmful and dangerous conditions, nor are they precise thresholds of potential human toxicity. The recommended changes to the AELs do not reflect change in, nor a refined understanding of, demonstrated human toxicity of these substances but rather the changes resulted from updated and minimally modified risk assessment assumptions. Overt adverse health effects have not been noted in association with the previously recommended exposure limits. This may be due to rigorous exposure prevention efforts in recent years as well as the conservative implementation of the existing limits (i.e., 8-hour time-weighted average exposure limits have been implemented as short-duration ceiling values). Recommended AELs for GB: CDC recommends a WPL value of 3×10^{-5} mg/m^3, expressed as an 8-hour time-weighted average (TWA). Additionally, CDC recommends a STEL of 1×10^{-4} mg/m^3 to be used in conjunction with the WPL. Exposures above the WPL up to the STEL should not be longer than 15 minutes and should not occur more than four times per day, and at least 60 minutes should elapse between successive exposures in this range. The

STEL should not be exceeded during the work day, even if the cumulative exposure over the 8-hour TWA is not exceeded. CDC recommends a decrease in the GPL to 1×10^{-6} mg/m³. The WPLs and GPLs values are approximately threefold lower than levels previously recommended by CDC in 1988. An immediately dangerous to life or health (IDLH) value of 0.1 mg/m³ is recommended for GB. Recommended AELs for GA: Although not as well-studied as GB, GA is believed to be approximately equal in potency to GB. Therefore, CDC recommends the same exposure limits for GA as for GB. Recommended AELs for VX: CDC recommends that the VX WPL, expressed as an 8-hour TWA, be decreased to 1×10^{-6} mg/m³. Additionally, CDC recommends a VX STEL of 1×10^{-5} mg/m³. An excursion to the STEL should not occur more than one time per day (compared to four times per day for a typical STEL). The recommended WPL is a factor of 10 lower than the CDC's 1988 recommendation. CDC recommends that the GPL for VX be decreased to 6×10^{-7} mg/m³ (a factor of five lower than CDC's 1988 recommendation). An IDLH value of 0.003 mg/m³ is recommended for VX. CDC's final recommendations are summarized in Table 1 below.

TABLE 1.—FINAL RECOMMENDED AIRBORNE EXPOSURE LIMITS (AELS) FOR GA, GB, AND VX

AEL (mg/m³)	General population limit (GPL)*	Worker population limit (WPL)*	Short-term exposure limit (STEL)* (Workers)	Immediately dangerous to life or health (IDLH) (Workers)
GA, GB	1×10^{-6}	3×10^{-5}	1×10^{-4}	0.1.
GA, GB—Previous (1988)	3×10^{-6}	1×10^{-4}		0.2 (Army)
VX	6×10^{-7}	1×10^{-6}	1×10^{-5} **	0.003
VX—Previous (1988)	3×10^{-6}	1×10^{-5}		0.02 (Army)
Averaging time	24 hours	8 hours	15 minutes	= 30 minutes
Monitoring Method for Recommended Exposure Criteria.	Historical monitor***	Historical monitor	Near-real-time monitor	Near-real-time monitor

* An additional reduction factor for statistical assurance of action at the exposure limit is not needed because of safety factors already built into the derivation of the exposure limit.

** VX STEL has been adjusted from 4×10^{-6} mg/m³ (up to four times per day) as proposed in the **Federal Register** announcement to 1×10^{-5} mg/m³ (not more than one time per day) based on technical capabilities of existing air-monitoring technologies.

*** Historical monitoring typically refers to long-term sampling and analytical methods. Air-monitoring results from historical methods are not known until laboratory analyses are complete. CDC does not specifically recommend the use of these AELs for uses other than transportation, worker protection during the destruction process, or general population protection. For example, the 8-hour WPL historically has been used for the Army-designated 3X decontamination, surveillance activities of leaking containers in storage, and charcoal unit mid-beds. CDC did not evaluate the applicability of the WPLs for these activities; the specific technical and safety requirements for each activity need to be considered individually. This announcement does not address the allowable stack concentration (ASC). The ASC is a ceiling value that serves as a destruction process source emission limit and not as a health standard. It typically is used for monitoring the furnace ducts and final exhaust stack, providing an early indication of an upset condition. Modeling of worst-case credible events and conditions at each installation should confirm that the WPL is not exceeded on-site or that the GPL is not exceeded at the installation boundary as a consequence of a release at or below the ASC.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: September 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–23683 Filed 9–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0379]

Draft Guidance for Industry on Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition'' (the draft guidance). The draft guidance provides information to industry on how to prepare a claim of categorical exclusion or an environmental assessment (EA) for submission to the Center for Food Safety and Applied Nutrition (CFSAN) in notifications for food contact substances, food additive petitions, color additive petitions, requests for exemption from regulation as a food additive, generally recognized as safe (GRAS) petitions, and petitions for certain food labeling regulations.

DATES: Submit written or electronic comments on the draft guidance and the collection of information by November 17, 2003, to ensure their adequate consideration in preparation of a revised guidance, if warranted. However, you may submit comments at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Guidance for Industry: Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition'' to the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3100, premarkt@cfsan.fda.gov. Send two self-addressed adhesive labels to assist that office in processing your requests. See **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the draft guidance and the collection of information provisions 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: Layla I. Batarseh, Center for Food Safety and Applied Nutrition (HFS–246), 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3016 or 202–

418–3005, FAX 202–418–3030, Internet: *Layla.Batarseh@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (NEPA) requires each Federal agency to assess, as an integral part of its decisionmaking process, the environmental impacts of its actions and requires that the interested and affected public be informed of environmental analyses. As an integral part of its regulatory procedures, FDA is obligated under NEPA to consider the environmental impact of agency actions, including allowing notifications for food contact substances to become effective and approving food additive petitions, color additive petitions, GRAS affirmation petitions, requests for exemption from regulation as a food additive, certain food labeling citizen petitions, nutrient content claims petitions, and health claims petitions. In 1997, FDA amended its regulations in part 25 (21 CFR part 25) to provide for categorical exclusions for additional classes of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental impact statement nor an EA is required (62 FR 40570, July 29, 1997) (the 1997 rule). As a result of the 1997 rule, FDA no longer routinely requires submission of information about the manufacturing and production of FDA-regulated articles, which information includes a certification of compliance with Federal, State, and local environmental laws. As FDA stated in the 1997 rule (62 FR 40570 at 40585–40586), after reviewing hundreds of EA's, the agency found that articles produced in compliance with applicable emission and occupational safety requirements do not have significant environmental effects, provided that no extraordinary circumstances apply to the production site. FDA also has eliminated the previously required EA and abbreviated EA formats from the amended regulations. Instead, appropriate EA formats are to be presented in guidance documents. FDA believes that guidance documents provide the agency with greater flexibility to interpret requirements under its NEPA procedures in a manner that responds to the evolving nature of environmental science and the needs of industry and interested parties. Such guidance documents, which interpret and clarify existing requirements imposed by statute and regulation and do not themselves create requirements, are not subject to the notice and comment rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553) and are consistent with the Council on Environmental Quality regulations (40 CFR 1507.3) that encourage agencies to publish explanatory guidance for their own procedures and to revise them as necessary to ensure full compliance with the purposes and provisions of NEPA.

This draft guidance provides information on how to prepare claims of categorical exclusion and EAs for submission to CFSAN. The following topics are covered in this draft guidance: (1) What types of industry-initiated actions are subject to a claim of categorical exclusion? (2) What must a claim of categorical exclusion include by regulation? (3) What is an EA? (4) When is an EA required by regulation and what format should be used? (5) What are extraordinary circumstances? (6) What suggestions does CFSAN have for preparing an EA? Although CFSAN encourages industry to use the EA formats described in this draft guidance because standardized documentation submitted by industry increases the efficiency of the review process, alternative approaches may be used if these approaches satisfy the requirements of the applicable statutes and regulations.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulations (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on the preparation of a claim of categorical exclusion or an environmental assessment for submission to CFSAN. It does not create or confer any rights, for or on any person, and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing the guidance. If you cannot identify the appropriate FDA staff, call the appropriate number listed in the title page of the guidance.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition

Description: FDA's regulation in § 25.20 specifies the types of actions related to food additive petitions, color additive petitions, requests for exemption from regulation as a food additive under § 170.39 (21 CFR 170.39), notifications for food contact substances under section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h)), GRAS affirmation petitions, and citizen petitions for certain food labeling regulations that require at least the preparation of an EA, unless the action qualifies for a categorical exclusion under § 25.30 or § 25.32. FDA's regulations in part 25 are based upon the requirements of NEPA (42 U.S.C. 4321 *et seq.*). The agency's collection of information on food additives and food-contact substances is based upon the requirements in section 409 of the act. Likewise, section 721 of the act (21 U.S.C. 379(e)) provides for the collection of information on color additives. The submission to FDA by interested parties of a GRAS affirmation petition is voluntary. The information to be submitted with a GRAS affirmation petition is listed in § 170.35 (21 CFR 170.35), including, in § 170.35(c)(1)(viii), the environmental

information to be submitted. The environmental information to be submitted with petitions for certain food labeling regulations is listed in 21 CFR 101.12(h)(12), 101.69(h), and 101.70(f)F.

Thus, FDA collects information on the potential for environmental impacts of its actions in the form of environmental assessments and claims for categorical exclusions from interested parties who request agency action by submitting to the agency any of the above listed petitions, requests for exemption, or food contact substance notifications. After this information has been collected, the agency will use it to determine whether its action may significantly affect the quality of the human environment.

FDA has collected information from interested parties requesting agency action for many years. Over the years, this collected information has taken several different forms. The agency amended its environmental regulations in the 1997 rule to reduce the number of NEPA evaluations by providing for categorical exclusions for additional classes of actions that do not individually or cumulatively have a significant affect on the quality of the human environment. In the 1997 rule, FDA also removed the formats for EAs from its regulations and, instead, now directs interested parties to the agency's Centers for information on what is needed in EAs. This draft guidance is FDA's current thinking on what information is needed for the environmental documentation of the actions that are most often requested. The draft guidance contains requests for certain information that has not been requested routinely in the past. FDA is now requesting that submitters provide certain information to support their claims that the categorical exclusions listed in § 25.32(i), (o), and (q) will be applicable to their requested actions. Since these informational requests are new, FDA is requesting approval from OMB for this collection of information. The remainder of the environmental information requests are covered by the information collection approvals for the underlying actions, i.e., the OMB control number for food additive petitions is 0910–0016; for color additive petitions, 0910–0185; for requests for exemption from regulation as a food additive under § 170.39, 0910–0298; for notifications for food contact substances, 0910–0480; for GRAS affirmation petitions, 0910–0132; and for petitions for food labeling regulations, 0910–0183.

Description of Respondents: The likely respondents include businesses engaged in the manufacture or sale of food, food ingredients, and substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

Table 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
25.32(i)	137	0.5	68	4	272
25.32(o)	1	1	1	1	1
25.32(q)	10	0.5	5	1	5
Total	148		74		278

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The above estimates for respondents and numbers of responses are based on the annualized numbers of petitions and notifications qualifying for § 25.32(i) and (q) that the agency has received since its environmental regulations were amended to include additional categorical exclusions. Please note that, since the agency revised its environmental regulations, there have been no submissions that requested an action that would have been subject to the categorical exclusion in § 25.32(o). To avoid counting this burden as zero, FDA has estimated the burden for this categorical exclusion at one respondent making one submission a year for a total of one annual submission. The hours per response were estimated as follows: First, FDA assumed that the new information it suggest be submitted in this guidance for each of these three categorical exclusions is readily available to the submitter. For the new information suggested for the exclusion in § 25.32(i), FDA expects that the submitter would gather information from appropriate persons in the submitter's company and to prepare this information for attachment to the claim for categorical exclusion. FDA believes that this effort should take about 4 hours per submission. For the new information suggested for the exclusions in § 25.32(o) and (q), the submitters almost always would only copy existing documentation and attach it to the claim for categorical exclusion. FDA believes that this should take no longer than about 1 hour per submission.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: September 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23623 Filed 9–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2003

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following rates for

inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2003 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Physician services being paid by Medicare was generated through legislation, effective July 1, 2001, that allows IHS facilities to file claims with the carrier for physician payment.

	Calendar Year 2003
Inpatient Hospital Per Diem Rate (Excludes Physician Services)	
Lower 48 States	$1,526
Alaska	2,049
Outpatient Per Visit Rate (Excluding Medicare)	
Lower 48 States	206
Alaska	360
Outpatient Per Visit Rate (Medicare)	
Lower 48 States	175
Alaska	332
Medicare Part B Inpatient Ancillary Per Diem Rate	
Lower 48 States	298
Alaska	589
Outpatient Surgery Rate (Medicare)	
Established Medicare rates for freestanding Ambulatory Surgery Centers.	

Effective Date for Calendar Year 2003 Rates

Consistent with previous annual rate revisions, the Calendar Year 2003 rates will be effective for services provided on/or after January 1, 2003, to the extent consistent with payment authorities including the applicable Medicaid State plan.

Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all cost and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($110 million or more annually). This notice is not a major rule because we have determined that the economic impact will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will not have a significant economic effect on these governments or the private sector.

The Department has determined that this notice does not have a substantial effect on States or local governments under Executive Order 13132 and will not interfere with the roles, rights and responsibilities of States or local governments.

We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order l2866, this notice was reviewed by the Office of Management and Budget.

Dated: September 10, 2003.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 03–23731 Filed 9–16–03; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: July 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Office of Investigation Office of Inspector General—DHHS Case Investigation Management System For Press Release From 07/01/2003–07/31/2003

Subject name	Address	Effective date
Program-Related Convictions:		
Loccisano, Gina Maria	Cranston, RI	8/20/2003
McGovern, Dana E.	Port Charlotte, FL	8/20/2003
McGovern's Ambulance Service, Inc.	Port Charlotte, FL	8/20/2003
Okoye, Patrick C.	Montgomery, AL	8/20/2003
Okoye, Godwin S.	Montgomery, AL	8/20/2003
Capobianco, Leo J.	Las Vegas, NV	8/20/2003
Khalatov, Leonid	Woodmere, NY	8/20/2003
Dooley, Michael F.	Carthage, NY	8/20/2003
Grim Thirty-Three, Inc.	Smithtown, NY	8/20/2003
Grimaldi, John	Lake George, NY	8/20/2003
JDS Ambulance Corp.	Woodmere, NY	8/20/2003
Murphy Jr., James E.	Niverville, NY	8/20/2003
Abrams, Barry	Flushing, NY	8/20/2003
Sabot, Theodore J.	Pittsfield, MA	8/20/2003
Houchins, Ednalee	S. Charleston, WV	8/20/2003

Subject name	Address	Effective date
Bellamy, Mary Elizabeth	Alderson, WV	8/20/2003
Rancocas Valley Anesthesia Associates	Cinnaminson, NJ	11/14/2002
Shearl, Cowan W.	Venice, FL	8/20/2003
Horton, Anthony H.	Maulding, SC	8/20/2003
Vigoreaux, Alejandro	Miami, FL	8/20/2003
Ruiz, Roberto	Miami, FL	8/20/2003
Smith, Karen L.	Miami, FL	8/20/2003
Suber, Ramona	Jenkinsville, SC	8/20/2003
Jones, Keshea T.	Jackson, TN	8/20/2003
Horton, Sammie	Grenada, MS	8/20/2003
Gilmore, Renee Lynn	Coleman, FL	8/20/2003
Kwangwari, Ngoni Christopher	Miami, FL	8/20/2003
Piperis, Stelios	Miami, FL	8/20/2003
Lipton, Ross Howard	Miami Shores, FL	8/20/2003
Mendez, Eduardo S.	Miami, FL	8/20/2003
Hernandez, Jose R.	Miami, FL	8/20/2003
Turner, Lisa	Enterprise, MS	8/20/2003
Ogundiya, Deji	Hermitage, TN	8/20/2003
Makins, Katetine C.	Laurens, SC	8/20/2003
Buckmon, Natasha	Columbia, SC	8/20/2003
Williams, Julius III	Stone Mountain, GA	8/20/2003
Allen, Jack W.	Estill, SC	8/20/2003
Redlich, Dale Palmer	Coral Springs, FL	8/20/2003
Haught, Barry D.	Eglin AFB, FL	8/20/2003
Nespeca, Thomas W.	Tampa, FL	8/20/2003
Stursburg, Christopher C.	Valrico, FL	8/20/2003
David M. Moss, DPM, P C	Garden City, MI	8/20/2003
Jackson, Wayne D.	Detroit, MI	8/20/2003
Parker, Kenneth R.	Akron, OH	8/20/2003
Miller, Susan M.	Elkhart, IL	8/20/2003
Weldy, Dennis K.	Bristol, IN	8/20/2003
Devore, Marla A.	Springfield, IL	8/20/2003
Mlodzik, Mary Beth	Princeton, WI	8/20/2003
Hermann, Rachel	Troy, OH	8/20/2003
Black, Dominica C.	Columbus, OH	8/20/2003
Smith, Calvert H. Jr.	Cincinnati, OH	8/20/2003
Ebert, Heather R.	Mount Gilead, OH	8/20/2003
Propelled Therapeutic Services	Detroit, MI	8/20/2003
Comprehensive Outpatient SVCS	Cleveland, OH	8/20/2003
Gallo, Angelo M.	Wiloughby, OH	8/20/2003
Gallo, Mark A.	Grafton, OH	8/20/2003
Mitrione, Robert T.	Yankton, SD	8/20/2003
Henderson, Martisa B.	Rayville, LA	8/20/2003
Phillips, Raymond Rene	Jonesboro, LA	8/20/2003
Billings, Arthur N.	Missouri, TX	8/20/2003
Daniel, Kristina Lea	Fort Lupton, CO	8/20/2003
Drake, Sherman Howard	Casper, WY	8/20/2003
Fluegel, Eric Michael	Aurora, CO	8/20/2003
Dupont, Robert Joseph Jr.	Leavenworth, KS	8/20/2003
Garwood, Jan Dierks	Yankton, SD	8/20/2003
Householder, Karl Otis	Leavenworth, KS	8/20/2003
Liveoak, Kelley Anne	Greenville, IL	8/20/2003
Dinkmeier, Lou Ann	Lamar, MO	8/20/2003
Bazazzadegan, Julia Elaine	Forth Worth, TX	8/20/2003
Wimbley, Mary E.	St Louis, MO	8/20/2003
Stepanyan, Arthur	Studio City, CA	8/20/2003
Daniels, Karen Ann	Sacramento, CA	8/20/2003
Stepanian, Asmik	Van Nuys, CA	8/20/2003
Cancio, Meneleo Cometa	Lompoc, CA	8/20/2003
Cancio, Raul Cometa	Eloy, AZ	8/20/2003
Mikayelyan, Rafik	Terminal Island, CA	8/20/2003
Urfalian, Sarkis	Altadena, CA	8/20/2003
Gottlieb, Jeffrey	Florence, AZ	8/20/2003
Berkovich, Lora	Long Beach, CA	8/20/2003
Yengibaryan, Sarkis	Eloy, CA	8/20/2003
Kaniadakis, Steven J.	Pensacola, FL	8/20/2003
Penniman, Vernanell Gibson	Azuza, CA	8/20/2003
White, Vance King	Los Angeles, CA	8/20/2003
Taylor, Gary W.	Los Angeles, CA	8/20/2003
Kioutouian, Ambartsoum	Hollywood, CA	8/20/2003
Chem, Phalla	Long Beach, CA	8/20/2003
Lewandowski, Rebecca Lynn	Klamath Falls, OR	5/2/2003
Bassey, Kristine A.	Anaheim, CA	5/20/2003
Lopez, Myrna Ramos	Chowchilla, CA	8/20/2003

Subject name	Address	Effective date
Lopez, Benjamin Pineda	Soledad, CA	8/20/2003
Lewandowski, Jennifer Ann	Long Beach, CA	8/20/2003
Ndemba, Jackson Ntone	Los Angeles, CA	8/20/2003
Johnson, Willie Lee	Riverside, CA	8/20/2003
Ahmed, Saeed	Wasco State Prison, CA	8/20/2003
Ahmed, Bilal	Wasco, CA	8/20/2003
Gabriel, Gabriel	La Puente, CA	8/20/2003
Farzad, Philip	Encino, CA	8/20/2003
Chelzinger, Micha	Tarzana, CA	8/20/2003
Kopilevich, Mikhail	Woodland Hills, CA	8/20/2003
Tsatourova, Inga	Dublin, CA	8/20/2003
Felony Conviction for Health Care Fraud:		
Orlander, Andrew	Eglin AFB, FL	8/20/2003
Desimone, Erik David	Tucker, GA	8/20/2003
Minarcik, John Robert	Skokie, FL	8/20/2003
Silvestro, Caroline L.	Mentor, OH	8/20/2003
Leon, Frank A. Jr.	Lorain, OH	8/20/2003
Nielsen, LA	Junta, CO	8/20/2003
Katherine Marie	La Junta, CO	8/20/2003
Brown, Glenn Cecil	Alpine, UT	8/20/2003
Klink, Loretta Lee	Auburn, CA	8/20/2003
Romano, Laurie C.	South Bend, IN	8/20/2003
Felony Control Substance Conviction:		
Garland, Tami A.	Danbury, CT	8/20/2003
Nicholson, Lisa F.	Pensacola, FL	8/20/2003
Sproul, Melanie Laree	Marianna, FL	8/20/2003
Key, Rebecca Lynn	Anderson, SC	8/20/2003
Mattera, Dianna Lynn	Tallahassee, FL	8/20/2003
Jones, Nina J.	Sparta, TN	8/20/2003
Lowe, Wanda Kay	Pleasant View, TN	8/20/2003
King, Vicky M.	Mooresburg, TN	8/20/2003
Imhoff, Patricia Suzanne	Phoenix, AZ	8/20/2003
Erb, Christopher John	W. Palm Beach, FL	8/20/2003
Daniels, Kim	Tazewell, TN	8/20/2003
Myers, Lisa Cheryl	Lithonia, GA	8/20/2003
Scheidler, Joseph Stanley	Hamiton, OH	8/20/2003
Tomko, John R.	Hubbard, OH	8/20/2003
Moliere-Cosse, Reachenelle	Marrero, La	8/20/2003
McCaa, Tammie Gilbreath	Ruston, LA	8/20/2003
Littell, Sandra Jane	Houston, TX	8/20/2003
Houston, Donald	Salt Lake City, UT	8/20/2003
Clise, Richard Keith	Fort Morgan, CO	8/20/2003
Evans, Eric Allen	Salt Lake City, UT	8/20/2003
Boyette, Carl Jeffrey	Chico, CA	8/20/2003
Patient Abuse/Neglect Convictions:		
Vasiliu, Vasilios	Glen Head, NY	8/20/2003
Brice, Mark D.	Tonawanda, NY	8/20/2003
Caulfield, Sharon A.	Ballston Lake, NY	8/20/2003
Rendon, Jairo	Malone, NY	8/20/2003
Correa, Johanna	Rochester, NY	8/20/2003
Guzman, Rudles Francis	Brooklyn, NY	8/20/2003
Hykes, Lisa	Okolona, MS	8/20/2003
Matthews, Kesha	Brooklyn, NY	8/20/2003
Cornelius, Cynthia	Jackson, MS	8/20/2003
Caldwell, Johnnie M.	Newberry, SC	8/20/2003
Jimenez, Henry	Orlando, FL	8/20/2003
St John, Sharon A.	Clifton, CO	8/20/2003
Gill, Rodney P.	Akron, OH	8/20/2003
Benoit, Leakisha Renee	Lafayette, LA	8/20/2003
Panoske, Jason B.	Okemah, OK	8/20/2003
Marshall, Victoria K.	Del City, OK	8/20/2003
Phillips, Darren Wayne	Pineville, LA	8/20/2003
Milea, Adrian Valeriu	Salt Lake City, UT	8/20/2003
Coy, Heather Renee	Rye, CO	8/20/2003
French, Lyle Reid	Louisville, CO	8/20/2003
Willard, Karl Terrell	Bowling Green, MO	8/20/2003
Landreneau, Michael Douglas	St. Joseph, MO	8/20/2003
Vinzant, Robin Renee	Mitchellville, IA	8/20/2003
Castillo, Julio Cesar	Kent, WA	8/20/2003
Neault, Charles Carey	Temecula, CA	8/20/2003
Hussain, Sheila Kay	Kingman, AZ	8/20/2003
Hussain, Rashida Khattoon	Kingman, AZ	8/20/2003
Goodman, Rebecca Kaye	N. Las Vegas, NV	8/20/2003
Smith, Dolores	Phoenix, AZ	8/20/2003

Subject name	Address	Effective date
Conviction For Health Care Fraud:		
Frede, Michael Dennis	Hazelwood, MO	8/20/2003
Conviction-Obstruction Of An Investigation:		
Nahas, Frederick J.	Longport, NJ	8/20/2003
Controlled Substance Convictions:		
Comito, Lee Ann	Utica, NY	8/20/2003
Garza, Pamela Irene	Crow Agency, MT	8/20/2003
License Revocation/Suspension/Surrendered:		
Sullivan, Colleen A.	Saugus, MA	8/20/2003
Timons, Jodie Lynn	Brookfield, MA	8/20/2003
Claire, Kelly	Rutland, MA	8/20/2003
Green, Joyce D.	Woodbine, NJ	8/20/2003
McIntyre, John G. Jr.	Raritan, NJ	8/20/2003
Difasi, Linda C	Syracuse, NY	8/20/2003
Pierre, Lovely Jeudy	Queens Village, NY	8/20/2003
Harris-Poole, Irene	Voorhees, NJ	8/20/2003
Lawler, Paul J.	Altamont, NY	8/20/2003
Dutton, Jimmy Lee	Mt. Vernon, NY	8/20/2003
McClernon, June Law	Yardley, PA	8/20/2003
Kassell, Eleanor A.	Baden, PA	8/20/2003
Albrecht, Frank M.	Easton, MD	8/20/2003
Deptula, Richard	Ellicott City, MD	8/20/2003
Graffum, Ann E.	Richmond, VA	8/20/2003
Whitlock, Aimee D.	Charleston, WV	8/20/2003
Young, Denise	Williamsport, PA	8/20/2003
Russell, Janet Marie	Chinchilla, PA	8/20/2003
Hammond, Deborah	Hollidaysburg, PA	8/20/2003
Donovan, Keith R.	Adelphi, MD	8/20/2003
Cantrell, Patricia A.	Inman, SC	8/20/2003
Weeks, William W.	Winter Haven, FL	8/20/2003
McQuaig, James Edward	St. Augustine, FL	8/20/2003
Murphy, Lonnie	Miami, FL	8/20/2003
Scott, Erica L.	Jackson, MS	8/20/2003
Guidry, Karen Mary	Arcadia, FL	8/20/2003
Humphreys, Janie F.	Pearl, MS	8/20/2003
Posey, Lisa	Terry, MS	8/20/2003
Stokes, Joseph Michael	Greenwood, MS	8/20/2003
Dawson, Tracie Lynn	Birmingham, AL	8/20/2003
Lonie, Paula R.	Lyles, TN	8/20/2003
Qualls, Mia L.	Savannah, TN	8/20/2003
Walker, Tammy	Nashville, TN	8/20/2003
Bowen, Vickie	Collins, MS	8/20/2003
Walker, Thomas A.	Meridian, MS	8/20/2003
Burns, Jackie A.	Ridgeland, MS	8/20/2003
Perdomo, Onelio E.	Gadsden, AL	8/20/2003
Cheatham, Sheryle D.	Shawnee, TN	8/20/2003
Butler, Misti D.	Oak Ridge, TN	8/20/2003
Boone, Ronald C.	Hermitage, TN	8/20/2003
Boone, Lisa	Gallatin, TN	8/20/2003
O'Brian, Melodye A.	Lantana, FL	8/20/2003
Belville-Coates, Sarah	Brandon, FL	8/20/2003
Hildreth, Holly Anne	High Springs, FL	8/20/2003
Rankine, Coral Elonz	Flagler Beach, FL	8/20/2003
Rundell, Jennifer Faith	Ocala, FL	8/20/2003
Williams, Kimberly Susan	Lantana, FL	8/20/2003
Griffin, Marjorie	Lakeland, FL	8/20/2003
Lund, Phyllis Looby	Key West, FL	8/20/2003
Moulton, Laurie Abby	Naples, FL	8/20/2003
Freed, Chrystal	Ft. Myers, FL	8/20/2003
Fitzgerald, Donna Gibson	Estero, FL	8/20/2003
O'Donnell, Carol Janet	Port Orange, FL	8/20/2003
Onieal, Jennifer I.	Brandon, FL	8/20/2003
Srinivasan, Govind	Deltona, FL	8/20/2003
Phillips, James Winston	Boynton Beach, FL	8/20/2003
Madrigal, Jayma M.	Morristown, TN	8/20/2003
Miller, Kimberly M.	Kingsport, TN	8/20/2003
Hall, Dixielee L.	Vero Beach, FL	8/20/2003
Giovino, Laura Glassgow	Dunedin, FL	8/20/2003
Hintz, Gigi T.	Clearwater, FL	8/20/2003
Jackson, Margaret	Punta Gorda, FL	8/20/2003
Warren, Stephanie	Centerville, TN	8/20/2003
Pence, Cretia	Bradyville, TN	8/20/2003
Crispin, Jeanette	Cautier, MS	8/20/2003
Doyle, Kay S.	Vicksburg, MS	8/20/2003

Subject name	Address	Effective date
Galipault, Jane	Lakeland, FL	8/20/2003
Duncan, Thomasa Joyce	Frostproof, FL	8/20/2003
Donaldson, Dora Elisa	Chuluota, FL	8/20/2003
Belaga, Natalie Elizabeth	University Park, FL	8/20/2003
Brant, Patricia Jo	Pensacola, FL	8/20/2003
Citera-Dowler, Francine	Hollywood, FL	8/20/2003
Cook, Donald Clarence	Green Acres, FL	8/20/2003
Tindle, Lisa A.	Raleigh, NC	8/20/2003
Wisnewski-Jones, Tina	West Melbourne, FL	8/20/2003
Milbut, Deborah Lynne	Boca Raton, FL	8/20/2003
Ford-Hayes, Christopher E.	Orlando, FL	8/20/2003
Ross, Cornelia R.	Nashville, TN	8/20/2003
Feazell, Christopher A.	Cookeville, TN	8/20/2003
Stallings, Marcella	Cookeville, TN	8/20/2003
Morton, Aileen	Alcoa, TN	8/20/2003
McLaughlin, Ginger C.	Hendersonville, TN	8/20/2003
Padawer, Jan E.	Memphis, TN	8/20/2003
Richardson, Gilbert A.	Defuniak Springs, FL	8/20/2003
Wells, Judy E. Muncie	Winchester, KY	8/20/2003
Johnson, Stacey Marie Cavote	The Plains, OH	8/20/2003
Billingsley, Renee	Prattville, AL	8/20/2003
Malcomb, Sheila Rebecca Holland	Trussville, AL	8/20/2003
Blakeney, Sherry Jean McManus	Sweetwater, AL	8/20/2003
Estok, Mary	Spring Hill, FL	8/20/2003
Arandia, Rodrigo S.	Chicago, IL	8/20/2003
Smith, Dannelly C.	Wyandotte, MI	8/20/2003
Sone, Janet Lee	Portage, IN	8/20/2003
Kay, William Ezra	Pepper Pike, OH	8/20/2003
Linnemann, Bruce Michael	Cincinnati, OH	8/20/2003
Cusma, Joseph A.	Massillon, OH	8/20/2003
Wojcik, David G.	Elgin, IL	8/20/2003
Veach, Caroline S.	Oakland, IL	8/20/2003
Steele, Jacqueline E.	Chicago, IL	8/20/2003
Sears, Jennifer L.	Champaign, IL	8/20/2003
Blackmond, Antonio	Chicago, IL	8/20/2003
Barron, Joel	Glendale, AZ	8/20/2003
Brown, Lakisha Antonette	Champaign, IL	8/20/2003
Anderson, Tisha L.	Rockford, IL	8/20/2003
Aalders, Nancy Block	Oak Lawn, IL	8/20/2003
Davidson, Mysti D.	Roamoke, TX	8/20/2003
Jones, Karen Denise	Marrero, LA	8/20/2003
Wood, Lisa Kathleen Adair	Little Rock, AR	8/20/2003
Hebert, Daphne Brook	Kaplan, LA	8/20/2003
Chandler, Mary Katherine	Shreveport, LA	8/20/2003
Jones, Leslie Adele	Metairie, LA	8/20/2003
Downs, Doris Irene	Marthaville, LA	8/20/2003
Hart, Dillis Leroy	Boise City, OK	8/20/2003
Snyder, Gary Lee	Littleton, CO	8/20/2003
Skuza, Richard S.	Colorado Sprngs, CO	8/20/2003
Noipermpoon, Samaporn	Aurora, CO	8/20/2003
King, Rochelle Shavon	Topeka, KS	8/20/2003
Wambeke, Florence	Rapid City, SD	8/20/2003
Reilly, Seth	Thermopolis, WY	8/20/2003
Rose, Linda	Meeteetse, WY	8/20/2003
Thornton, Michael Kent	St. Peters, MO	8/20/2003
Ellis, Brian J.	Springfield, MO	8/20/2003
Villarreal, Reinalda R.	Collbran, CO	8/20/2003
Moore, Staci L.	Pleasant Hill, MO	8/20/2003
Curl, Denise M.	Dubuque, IA	8/20/2003
King, Teressa A.	Yreka, CA	8/20/2003
Du, John Zheng	Sacramento, CA	8/20/2003
Body Care Center, Clinic	Costa Mesa, CA	8/20/2003
Lacy, Karen N.	Pasadena, CA	8/20/2003
Freed, Stephen W.	Idaho Falls, ID	8/20/2003
Wise, Leslie Eugene	Newport Beach, CA	8/20/2003
Maslana, Joanne Elizabeth	Tucson, AZ	8/20/2003
Peters, Katherine	Escondido, CA	8/20/2003
McGee-Jones, Barbara Dale	Del Mar, CA	8/20/2003
Jesse, Rosalie C.	El Cajon, CA	8/20/2003
Weaver, Deanna E.	Tucson, AZ	8/20/2003
Doyle, Wendy Ann	La Crescenta, CA	8/20/2003
Schave, Barbara	Beverly Hills, CA	8/20/2003
Arias, Kerry Lynn	Tucson, AZ	8/20/2003
Himalaya, Jolyn	Rancho Palos Verdes, CA	8/20/2003

Subject name	Address	Effective date
Fraud/Kickbacks:		
Weinstein, Leonard	Monroe TWP, NJ	5/29/2003
Owned/Controlled by Convicted Entities:		
BGF Transportation, Inc.	Brooklyn, NY	8/20/2003
M & D Family Pharmacy, Inc.	Rego Park, NY	8/20/2003
Kendall Behavioral Healthcare Ctr, Inc.	Coleman, FL	8/20/2003
Kendall Physical Theraphy Ctr, Inc.	Miami, FL	8/20/2003
Chuck's Super Rite Drugs, Inc.	Atlanta, GA	8/20/2003
Behavioral Health Providers	Estill, SC	8/20/2003
Arlington House, Inc.	Estill, SC	8/20/2003
West Miami Medical Supply, Inc.	Tallahassee, FL	8/20/2003
Ready Medical Equipment Corp.	Tallahassee, FL	8/20/2003
Sunshine Medical Enterprise Group, Inc.	Miami, FL	8/20/2003
Advanced Family Dental Care	Idaho Falls, ID	8/20/2003
Health Pro Medical Labs	La Habra, CA	8/20/2003
Joseph E. Cobbs Chiropractic	San Diego, CA	8/20/2003
Chiro ACU Center	Garden Grove, CA	8/20/2003
Default on Heal Loan:		
Clark, Freeman L.	Eglin AFB, FL	5/16/2003
Bowers, John Benjamin	Haysville, KS	8/20/2003
Davis, Georgia A.	Randallstown, MD	6/12/2003
Mark, Jeffrey	Portland, OR	7/16/2003
Doyle, Timothy P.	Bellevue, WA	7/22/2003
Strong-Fields, Michelle A.	Philadelphia, PA	6/23/2003

Dated: September 3, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–23637 Filed 9–16–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: August 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of August 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

PROGRAM-RELATED CONVICTIONS

Bruce, Nicole Elizabeth	Keene, NH	9/19/2003
Khanin, Anna	Brooklyn, NY	9/19/2003
Nair, Ramachandran	Staten Island, NY	9/19/2003
Munoz, Jesse Blane	Manhassett, NY	9/19/2003
Spencer, Eric	Rochester, NY	9/19/2003
Anderson, Lisa	Poughkeepsie, NY	9/19/2003
Rojas, Enrique	Fishkill, NY	9/19/2003
Chhabra, Vijay K	Holliswood, NY	9/19/2003
Cossio, Jose	Miami, FL	9/19/2003
Walker, Leonard	Vero Beach, FL	9/19/2003
Visone, Leanora M	Ft. Lauderdale, FL	9/19/2003
Williams, Merri A	Neeses, SC	9/19/2003
Phillips. Veta Jo	Travelers Rest, SC	9/19/2003
Merlino, John C	Tampa, FL	9/19/2003
Bidelspach, John Samuel	Spring Hill, FL	9/19/2003
Ginn, Audrey M	Lucasville, OH	9/19/2003
Rugg, Dennis D	Waupun, WI	9/19/2003
George H. Ilodi, D P M, Inc	E. Cleveland, OH	9/19/2003
Mahoney, Linda S	Columbus, OH	9/19/2003
Puterbaugh, Debra Ann	Anoka, MN	9/19/2003
Jack A. Kaufman, D P M, P C	Farmington Hills, MI	9/19/2003
Ilodi, George H	Solon, OH	9/19/2003
Reams, James Edgar	Kerrville, TX	9/19/2003
Garrett, Melissa Lou	Colorado Springs, CO	9/19/2003
Brignac, Phyllis Guillory	Reddell, LA	9/19/2003
Tullius, Richard Anthony	Hurricane, UT	9/19/2003

Pierce, Shirley L	St. Louis, MO	9/19/2003
Gram, Nina Joanne	Freeport, ME	9/19/2003
Teran, Jo-Lene Lucille	Weed, CA	9/19/2003
West, Sharon	Inglewood, CA	9/19/2003
Cole, Wilhermina Omolara	Carson, CA	6/23/2003
Roedel, Marlisa	Torrance, CA	5/23/2003
Nwakwo, Raymond	Long Beach, CA	9/19/2003
Ehumadu, Adolphus Kelechi	Diamond Bar, CA	9/19/2003
Colosimo, Charles Philip	Las Vegas, NV	9/19/2003
Colosimo, Roseann C	Las Vegas, NV	9/19/2003
Quintero, Norazelh Bonillas	Phoenix, AZ	9/19/2003
Vowles, Keith Orme	Reno, NV	9/19/2003

FELONY CONVICTION FOR HEALTH CARE FRAUD

Levin, Richard A	Pittsford, NY	9/19/2003
Dinkel, Arthur Jr	Denville, NJ	9/19/2003
Fox, Paul John	Brooklyn, NY	9/19/2003
Franken, Bruce Elliott	Columbus, OH	9/19/2003
Powers, Robert D	Tipp City, OH	9/19/2003
Powers, Tracy S	Tipp City, OH	9/19/2003
West, Alex	W. Bloomfield, MI	9/19/2003
Hall, Karen Sue	Warrenton, MO	9/19/2003
Thompson, Shanay Arthell	Denver, CO	9/19/2003
Hancock, Steven Mark	Springfield, MO	9/19/2003
Ahrablou, Mehrad	Los Angeles, CA	9/19/2003

FELONY CONTROL SUBSTANCE CONVICTION

Perminter, Margaret L	Alderson, WV	9/19/2003
Billig, Edmund	Philadelphia, PA	9/19/2003
Dykes, Edward	Lumberton, MS	9/19/2003
Nelson, Ricky Joe	Fort Worth, TX	9/19/2003
Carter, Janie H	Lexington, KY	9/19/2003
Pollock, Tammy J	Smyrna, TN	9/19/2003
Smith, Sondra	Rossville, GA	9/19/2003
Twedt, Linda M	Columbus, GA	9/19/2003
Stoltz, James Nathan	Manchester, KY	9/19/2003
Romano, Robi G	Manchester, TN	9/19/2003
Burkhart, Terri M	Indian Mound, TN	9/19/2003
Harvey, Jennifer Leigh	Houghton Lake, MI	9/19/2003
Hughes, Amy Christine	Lafayette, IN	9/19/2003
Dicello, Michael A Jr	Mentor, OH	9/19/2003
Hall, Cathalen Bratcher	Houston, TX	9/19/2003
Greer, Christopher Wayne	Texarkana, TX	9/19/2003
Hammett, Kathleen A	Center, TX	9/19/2003
Towle, Lisa Marie	Welsh, LA	9/19/2003
Martin, Jeffrey Rogers	Beaumont, TX	9/19/2003
Whitaker, Eilea L	Marion, AR	9/19/2003
Eastman, Cheryl Lynn	Crow Agency, Mt	9/19/2003
Mitchell, Julie Ann	Salt Lake City, UT	9/19/2003
Haldaman, Karen Lynn	Coudersport, PA	9/19/2003
Materi, Kathleen	Nekoma, ND	9/19/2003
Bloomfield, Harold Herman	San Diego, CA	9/19/2003

PATIENT ABUSE/NEGLECT CONVICTIONS

Sisco, Barbara Lois	Keene, NH	9/19/2003
Tingle, Trevor	Newburgh, NY	9/19/2003
Klein, Victor	New York, NY	9/19/2003
Look, William S	Rome, NY	9/19/2003
Taormina, Theresa Ann	Monaca, PA	9/19/2003
McLane, John	Columbia, SC	9/19/2003
Graddy, Camelia Yolanda	Wrightsville, GA	9/19/2003
Vo, Andrew M	Palm Bay, FL	9/19/2003
Mearite, Pearlie	Dillon, SC	9/19/2003
Mathis, Jacqueline Denise	Jackson, MS	9/19/2003
Walker, Aubrey D	Gloster, MS	9/19/2003
Smith, Roberto	Detroit, MI	9/19/2003
Farrow, Dewanna	Madison, WI	9/19/2003
Robinson, Rosalind L	Milwaukee, WI	9/19/2003
Ivers, Tim	Fairfield, OH	9/19/2003
Mathis, Harold Irwin	West Bloomfield, MI	9/19/2003
Williams, Leon Dewayne	Grand Rapids, MI	9/19/2003
Graham, Carolyn	Detroit, MI	9/19/2003
Fugere, Linda Joy	Freesoil, MI	9/19/2003
Stewart, Sharicka Jvon	Alexandria, LA	9/19/2003

Dominquez, Grace Victoria	Northglenn, CO	9/19/2003
Dodd, John Alphonsus	Clinton, IA	9/19/2003
Forbes, Monica Estelle	Bettendorf, IA	9/19/2003
Heiss, Richard James	Bakersfield, CA	9/19/2003
Bullock, Clarence	Anchorage, AK	9/19/2003
Shipman, Adam L	Vancouver, WA	9/19/2003
Duarte, Nancy	Glendale, AZ	9/19/2003
Smith, Chinelo Amaka	North Las Vegas, NV	9/19/2003

CONVICTION FOR HEALTH CARE FRAUD

Mayfield, Donna Carolyn	Salt Lake City, UT	9/19/2003

LICENSE REVOCATION/SUSPENSION/SURRENDERED

Crewson, Laura Elizabeth	Sullivan, NH	9/19/2003
Hope, Peter Blanchard	Moultonborough, NH	9/19/2003
Peterson, Charlene Joan	Dorchester, MA	9/19/2003
Prescott, April Dawn	Tilton, NH	9/19/2003
Tombeng, David	Rochester, NH	9/19/2003
Ladega, Lynne D	Randolph, MA	9/19/2003
Kline, Bruce Robert	Winthrop, MA	9/19/2003
Yu, Jian	Hamilton, MA	9/19/2003
Harrison, Donna Michelle	South Hamilton, MA	9/19/2003
Inskeep, Patricia Gail	Pownal, VT	9/19/2003
Sirois, James R	Bangor, ME	9/19/2003
Coughlin, Linda Louise	West Springfield, MA	9/19/2003
Vaz, Arthur Lewis Jr	New Bedford, MA	9/19/2003
Peterson, Ruth Anne	New Bedford, MA	9/19/2003
Delisle, Christine Marie	Wales, MA	9/19/2003
Enos, Elaine Ruth	Wollaston, MA	9/19/2003
Ferreira, Donna Marie	Warren, RI	9/19/2003
Chadwick, Simeon	Winooski, VT	9/19/2003
Cooney, Glen Patrick	White River Junction, VT	9/19/2003
Ouellette, Maureen Ann	Hooksett, NH	9/19/2003
Getman (Parks), Lisa	Enfield, NH	9/19/2003
Ojiearontor, Godfrey E	Wilder, NH	9/19/2003
Scarpino, Lisa May	Manchester, NH	9/19/2003
Lovering, Lynn Louise	Weare, NH	9/19/2003
Reyes, Cheryl Anne	Manchester, NH	9/19/2003
Marchand, Anthony	Basking Ridge, NJ	9/19/2003
Stokes, Ronald L	Long Branch, NJ	9/19/2003
Khan, Nisaruddin	Olean, NY	9/19/2003
Galle, James	Hackensack, NJ	9/19/2003
Scarborough, Susan A	Rochester, NY	9/19/2003
Leatherdale, Laura	Wrightstown, NJ	9/19/2003
Pinkerton, Marian	Riverton, NJ	9/19/2003
Slakie, Christine	Willingboro, NJ	9/19/2003
Barna, Arlene	Oaklyn, NJ	9/19/2003
Friedman, Sherry	Oak Ridge, NJ	9/19/2003
Buono, Donna	Marlton, NJ	9/19/2003
Burns, Margaret	Scotch Plains, NJ	9/19/2003
Garwood, Donna	Lafayette, NJ	9/19/2003
Wells, Alan	Edison, NJ	9/19/2003
Macola, Josephine	Scotch Plains, NJ	9/19/2003
Amato, Vanessa A	N Arlington, NJ	9/19/2003
McAnaney, Susan M	Somers Point, NJ	9/19/2003
Greene, Liza	Pennsville, NJ	9/19/2003
Ilgenfritz, Geraldine	Glendora, NJ	9/19/2003
Yule, Robert C	Middletown, NJ	9/19/2003
Chavanon, Bernadette	Berlin, NJ	9/19/2003
Zihala, Teresa	Spotswood, NJ	9/19/2003
Hamm, Carrie	Linden, NJ	9/19/2003
Arneson, Victoria	Cranford, NJ	9/19/2003
Pitter, Patrick Arthur	Brooklyn, NY	9/19/2003
Murawaski, Constance Rambo	Horsham, PA	9/19/2003
Polk, Alvin L	Aston, PA	9/19/2003
Dressler, Tammy Kephart	Windsor, PA	9/19/2003
Borowksi, Donna M	Colorado Springs, CO	9/19/2003
Barr, Reid E	Strasburg, VA	9/19/2003
Dolinish, Ilona J	Old Forge, PA	9/19/2003
Wooldridge, Judith	Frederick, MD	9/19/2003
Morton, James D	Philadelphia, PA	9/19/2003
Karnes, Joyce E	Whitaker, PA	9/19/2003
Lynn, Ellen Katz	Lebanon, PA	9/19/2003
Hentz, Clark B	Chickamauga, GA	9/19/2003

Carr, Dianne F	Tallahassee, FL	9/19/2003
Adderly, Pamela	Miami, FL	9/19/2003
Gootgeld, Donna L	Hollywood, FL	9/19/2003
Harrison, Brenda S	Charleston, MS	9/19/2003
Halter, Amy F	Port St Lucie, FL	9/19/2003
Eads, Joe Danny	Naples, FL	9/19/2003
Lewis, Beverly C	Nashville, TN	9/19/2003
Moody, Mae Rose	Lakeland, FL	9/19/2003
Miller, Sandi Smith	Pensacola, FL	9/19/2003
Miller, Nissa L	Franklin, TN	9/19/2003
Milton, Donna K	Clarksville, TN	9/19/2003
Hernandez, Alisha	Jackson, MS	9/19/2003
Nations, Shawn Rene	Newhebron, MS	9/19/2003
Moore, Suzanne S	Lawrenceville, GA	9/19/2003
Lanier, Chris L	Magnolia, NC	9/19/2003
Walter, Gregory A	Jonesboro, TN	9/19/2003
McReynolds, Robert Lee	Keystone Heights, FL	9/19/2003
Mustur, Srentenija	Santa Cruz, CA	9/19/2003
Fritz, Laura A	Bunnell, FL	9/19/2003
Ausborn, Rachel Joyce	Pensacola, FL	9/19/2003
Hendon, Stephanie	Indianola, MS	9/19/2003
Moles-Miranda, Lori	Livingston, TN	9/19/2003
Koppelman, Linda Langohr	Vero Beach, FL	9/19/2003
O'Brien, Maureen Mary	Spring Hill, FL	9/19/2003
Ritchey, Nancy R	Chattanooga, TN	9/19/2003
Lu, Jiade J	New York, NY	9/19/2003
Corbett, Tamya Denise Gillespie	Pike Rd, AL	9/19/2003
Morris, Pamela Gwen Gibbs	Southside, AL	9/19/2003
Hann, Stacie Lynne	Brighton, AL	9/19/2003
Feltner, Bonnie Louise Wyah	Corbin, KY	9/19/2003
Brooks, Elizabeth S	Clermont, FL	9/19/2003
Ghigliotty, Joanna Lynn	Ocklawaha, FL	9/19/2003
Johnson, Julie E	Port St Joe, FL	9/19/2003
Lemieux, Bryant George	Tampa, FL	9/19/2003
Maggard, Vickie Lynn	Olive Hill, KY	9/19/2003
McCalister, Valerie	Lakeland, FL	9/19/2003
Rossi, Cheryl Ann	Royal Palm Beach, FL	9/19/2003
Saunders, James Chalker	Keystone Heights, FL	9/19/2003
Swartz, Lila Florence	Tallahassee, FL	9/19/2003
Tremer, Catherine	Pensacola, FL	9/19/2003
McDonald, Anna H	Daytona, FL	9/19/2003
McKee, Michael John	Winter Springs, FL	9/19/2003
Moriarty, Shawn Timothy	Jacksonville, FL	9/19/2003
Poteat, Anthony Paul	Silver Springs, FL	9/19/2003
Gurley, Bradley M	Oak Ridge, TN	9/19/2003
Eustaquio, Lena Ignacio	Miami, FL	9/19/2003
Saunders, Thomas M	Casselberry, FL	9/19/2003
Fugate, Marjorie A	Ferguson, KY	9/19/2003
Cecil, Dana Jo	Philpot, KY	9/19/2003
Barton, Teresa K	Flemingsburg, KY	9/19/2003
Leudenburg, William A	Carlisle, KY	9/19/2003
Myers, Gregory Reed	Crestview, FL	9/19/2003
Durrence, Terri Michelle	McGregor, TX	9/19/2003
Broner, Cynthia W	Columbus, OH	9/19/2003
Kennen, James Michael	Cleveland, OH	9/19/2003
Cole, Douglas Agee	Traverse City, MI	9/19/2003
Jackson, Dathan Ondreal	Belleville, IL	9/19/2003
Zorger, David M	Godfrey, IL	9/19/2003
Mercado, Sofia M	Chicago, IL	9/19/2003
Larry, Rose Ellen	Jackson, MS	9/19/2003
Mensen, Margaret M	Belleville, IL	9/19/2003
Ross, Debrah A	Chicago, IL	9/19/2003
Garner, Helen M	Summit Argo, IL	9/19/2003
Pavel, Emanuela E	Lake Zurich, IL	9/19/2003
Henderson, Cara J	East Peoria, IL	9/19/2003
Cole, Angela R	Maywood, IL	9/19/2003
Clark, Audra Kaye	Sterling, IL	9/19/2003
Chaparro, Jose A	Chicago, IL	9/19/2003
Carver, Tracy Renee	Park Forest, IL	9/19/2003
Redman, Dianna L	Port Byron, IL	9/19/2003
Walker, Desiree Estelle	Frankfort, KY	9/19/2003
Ivy, Robert Lee	San Antonio, TX	9/19/2003
Hill, Linda Marie	Denton, TX	9/19/2003
Temple, Rita Fay	Dallas, TX	9/19/2003
Haney, Nicolle Dauphinee	Dallas, TX	9/19/2003
McLarty, Richard Wayne	Longview, TX	9/19/2003

McWilliams, David J	Oklahoma City, OK	9/19/2003
Holt, Betty Irene	N. Little Rock, AR	9/19/2003
Smith, Detra Leana	Sherman, TX	9/19/2003
Dewindt-Harris, Lorraine Barbara	Lamarque, TX	9/19/2003
McByrde, Martha Ann	West Memphis, AR	9/19/2003
Roach, Brenda Maye Hightower	Pearcy, AR	9/19/2003
Haynes, Rhonda Lynn Johnson Sweeney	Hermitage, AR	9/19/2003
Hunt, Doris Jean Duty	Batesville, AR	9/19/2003
Ball, Lisa An	Wichita, KS	9/19/2003
Hornak, Eric A	Denver, CO	9/19/2003
Parcel, Troy Ross	Springfield, MO	9/19/2003
Ketchum, Carol Lynn	Peyton, Co	9/19/2003
Hanson, Cathy Jean	Grand Junction, CO	9/19/2003
Muth, Kimberly Ann	Aurora, CO	9/19/2003
Fields, Kerry Lynn	Lakewood, CO	9/19/2003
Cormier, Larry J	Pueblo West, CO	9/19/2003
Rimpley, Shanna V'Ann	Montrose, CO	9/19/2003
Jordan, Nicole Collette	St. George, UT	9/19/2003
Miller, Regina Sue	Lacygne, KS	9/19/2003
DuPuy, Cynthia A	Adel, IA	9/19/2003
Charles, Christopher M	Salina, KS	9/19/2003
Spenler, Laurie D	Iowa City, IA	9/19/2003
Cardwell, Monte	Salina, KS	9/19/2003
Pickard, Roland Douglas	Salida, CO	9/19/2003
Jones, Carol J	Bonne Terre, MO	9/19/2003
Chambers, Marcia	St. Louis, MO	9/19/2003
Hollinger, Mark A	Springfield, MO	9/19/2003
Byland, Karen Mae	Moberly, MO	9/19/2003
Dotson, Violet Carter	San Francisco, CA	9/19/2003
Rutledge, Valerie	Modesto, CA	9/19/2003
Mendoza, Serafin Perez	Newark, CA	9/19/2003
Dye, Richard B	Half Moon Bay, CA	9/19/2003
Mann, Peter Michael	Crescent City, CA	9/19/2003
Price, Charles Lyman	San Francisco, CA	9/19/2003
Aguiar, Nancy Leigh	Boise, ID	9/19/2003
Carty, Theophile	Los Angeles, CA	9/19/2003
Figueroa, Abraham Jose	Tucson, AZ	9/19/2003
Hilde, Reuben L. Jr	Whittier, CA	9/19/2003
Sison, Renato Fernandez	Riverside, CA	9/19/2003
Santos, Enriqueta	Rosemead, CA	9/19/2003
Healy, Bridget Anne	Azusa, CA	9/19/2003
Christiansen, Nancy A	Tucson, AZ	9/19/2003
Castorina, Cyndi Ann	Whittier, CA	9/19/2003
Rogers, Kathleen JoAnn	Long Beach, CA	9/19/2003
Doran, Andrew J. Connick	Inglewood, CA	9/19/2003
Rech, Geraldine Alice	Riverside, CA	9/19/2003
Wooley, Johnny R. II	Long Beach, CA	9/19/2003
Cho, Nam Kyung	Los Angeles, CA	9/19/2003
Tager, Robert	North Hollywood, CA	9/19/2003
Griffin, Anissa C	Surprise, AZ	9/19/2003

Federal/State Exclusion/Suspension

Aulova, Zinaida	Forest Hills, NY	9/19/2003
Henderickson, C. Gregory	Parshall, ND	9/19/2003
Pioneer Drug Inc	Parshall, ND	9/19/2003

Fraud/Kickbacks

Batoff, Stephen B	Yardley, PA	1/30/2003
Rodell, Calvin A	Stone Mountain, GA	9/19/2003
Bajwa, Ahsan Klim	Fresno	5/16/2003

Owned/Controlled by Convicted Entities

Dyersburg Minor Medical Clinic	Dyersburg, TN	9/19/2003
Dyersburg Children's Clinic PC	Dyersburg, TN	9/19/2003
John R. Minarcik, MD, SC	Vero Beach, FL	9/19/2003
U.S. International Healthcare	New York, NY	9/19/2003
Aris Medical Equipment Corp	Tallahassee, FL	9/19/2003
Drake's Prescription Center	Casper, WY	9/19/2003
C. Philip Colosimo, PHD & Associates, Ltd	Las Vegas, NV	9/19/2003

Default on Heal Loan

Fluck, Dennis W	Breinigsville, PA	9/19/2003
Lumpkins, Lola R	Chicago, IL	9/19/2003

Glover, Geraldine M	Cleveland Heights, OH	8/20/2003

Dated: September 2, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–23638 Filed 9–16–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: September 25, 2003.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marc Rigas, Ph.D., Scientific Review Administrator, Office of Review, National Center For Research Resources/NIH, One Democracy Plaza, 6701 Democracy Boulevard, RM. 1080, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0806, *rigasm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: October 7–8, 2003.

Open: October 7, 2003, 8 a.m. to 8:30 a.m.

Agenda: To discuss program planning and other issues.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Closed: October 8, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Guo Zhang, MD, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room WS–1064, 10th Floor, Bethesda, MD 20814–9692, (301) 435–0812, *zhanggu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23643 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Program Project Application Review.

Date: October 3, 2003.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20822.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23639 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Program Project Review.

Date: October 2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A Ansari, Ph.D., Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23640 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Microarray Awards.

Date: August 21–22, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23641 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 14–15, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Nancy B. Saunders, Ph.D., Executive Secretary, Division of Extramural Activities, NIAID, NIH, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ns120v@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Centers for AIDS Research (CFAR).

Date: October 20–21, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Alec Ritchie, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23642 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the AIDS Research Advisory Committee, NIAID, September 29, 2003, 1 p.m. to September 30, 2003, 3 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD, 20892 which was published in the **Federal Register** on August 26, 2003, 68FRN165 page 51290.

The meeting will be held only on September 29, from 1 p.m. to 8:30 p.m. in Conference Room E1/E2, Natcher Building. It will not continue on September 30. The meeting is open to the public.

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23644 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 24, 2003.

Open: 7:30 a.m. to 8 a.m.

Agenda: Reports from Institute Staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Closed: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, Ph.D., Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402—2829.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23646 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: October 22–23, 2003.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melissa J. Stick, Ph.D. MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23647 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Muscular Disorders Review Meeting.

Date: October 30–31, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Grants Review Branch, NIAMS, NIH, 6701 Democracy Plaza, Bethesda, MD 20892, 301 594–4952, *ansarai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23648 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, T23 Reviews for Service & Epidemiology Applications.

Date: October 9, 2003.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Martha Ann Carey, Ph.D., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mccarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: October 14–15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washingotn, DC 20037.

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Emphasis Panel, Child and Adolescent Interventions.

Date: October 27, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Danyelle Sterling, Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6154F, MSC9606, Bethesda, MD 20892–9606, 301–443–8188, *dsterlin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award, 93.282, Mental Health National Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23649 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Allergy and Infectious Diseases Council, September 29, 2003, 8:30 a.m. to September 30, 2003 5 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD, 20892 which was published in the **Federal Register** on August 26, 2003, 66 FR 165 page 51284.

The open portion of the meeting will be held only on September 29 from 1 p.m. to 8:30 p.m. The meeting is partially closed to the public.

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23650 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Molecular Mechanisms Review of Research Project Grants.

Date: October 21, 2003.

Time: 9 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Teresa Nesbitt, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–4958.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23651 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: October 7–8, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (303) 435–1433.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: October 7–8, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–E/F COL.

Date: October 7, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark R. Green, PhD., Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: October 20, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6100 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 20892–9547, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Medications Development Research.

Date: October 20, 2003.

Time: 4:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6100 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: November 4–6, 2003.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: November 5, 2003.

Time: 6:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institute of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 451–4530.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Center Review Committee.

Date: November 18–19, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23652 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: October 2–3, 2003.

Time: October 2, 2003, 6 p.m. to recess.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: October 3, 2003, 9 a.m. to 10:45 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive; Room 4C32, Bethesda, MD 20892.

Time: October 3, 2003, 11 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Room 1327, Bethesda, MD 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23653 Filed 9–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 9 30 I: Shared Instrumentation.

Date: September 25, 2003.

Time: 8 a.m. to 12:01 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bill Bunnag, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 9 50 R: Biomedical Informatics.

Date: September 25–26, 2003.

Time: 1 p.m. to 5:01 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bill Bunnag, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Biology of Development and Aging Integrated Review Group International and Cooperative Projects 1 Study Section.

Date: October 9–10, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7840, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS2 (30 I) Shared Instrumentation.

Date: October 10, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Terrace, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, Ph.D., Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Malaria Transmission.

Date: October 14, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CDP 01: Chemo/Dietary Prevention.

Date: October 15–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Neal B. West, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7804, Bethesda, MD 20892–7808, (301) 435–2633, *westnea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship Review: Sensory and Motor Systems Physiology.

Date: October 15, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel Genes in Tumor Pathogenesis.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1179, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 9 10 B: Small Business: Biomedical Informatics.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group. Neurotransporters, Receptors, and Calcium Signaling Study Section. Neutrotransporters, Receptors, Channels, and Calcium Signaling.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Peter B. Guthrie, Ph.D., Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Psychosocial Development, Risk and Prevention Study Section.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSSW 50R:PA02–125: Bioengineering Nanotechnology Initiative.

Date: October 17, 2003.

Time: 3 p.m. to 3:30 p.m..

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Berhouz Shabestari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group Child Psychopathology and Developmental Disabilities Study Section.

Date: October 20–21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fontainebleau Hilton Resort, 4441 Collins Ave., Miami Beach, FL 33140.

Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Anxiety Disorders: Diagnostic Issues and Outcomes.

Date: October 21, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mariela Shirley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7759, Bethesda, MD 20892, 301–435–3554, *shirleym@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: October 22–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, 301–435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group Genome Study Section.

Date: October 22–24, 2003.

Time: 7:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sally Ann Amero, Ph.D., Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group Biochemistry Study Section.

Date: October 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael M. Sveda, Ph.D., Scientific Review Administrator, Biochemistry Study Section, Biochemical

Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–451–3565, *svedam@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Virology Study Section.

Date: October 23–24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joanna M. Pyper, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–1151, *pyper@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Biomarkers Review Meeting

Date: October 26–28, 2003.

Time: 6:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, 301–451–8754, *bellmar@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23645 Filed 9–16–03; 8:45 am]

BILLING CODE 1440–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Identifying Best Practice Models of Mental Health and Substance Abuse Services for Homeless Adolescents, Runaway, and Throwaway Youth—New—This is a project of SAMHSA's Center for Mental Health Services (CMHS). The first stage of this study will involve the compilation of a directory of agencies providing services to homeless, runaway and throwaway youth across the nation. The directory will be developed using published information and information on the internet about agencies providing services to these youth. This information will be summarized and will be e-mailed/mailed to the agency with a request that they complete or correct information as appropriate. The agency will be asked to e-mail/mail back their completed/revised form; as necessary, agencies will be telephoned to complete or correct information.

From this universe of service providers, a probability sample of approximately 52 providers will be selected to receive a site visit. During the site visit, information will be collected from the facility director or a designee about the staff (*e.g.*, number and training), characteristics of the target service population, and services provided. In addition, at each site a sample of approximately 20 youth (age 12–21 years of age who are homeless, runaway, or throwaway) will be selected for interview. A site designee will be asked to be present during the administration of the youth informed consents. The results of this study will provide CMHS, policy makers, and service providers with a better understanding of the health problems and needs of youth, the availability of services to the youth, their service utilization, and practices associated with positive engagement and response to treatment.

Total response burden for this project is summarized in the following table.

Form name	No. of respondents	Responses /respondent	Hours/ response	Total response burden (hours)
Directory*:				
Near complete	336	1	0.25	84
Partial complete	59	1	0.33	19
Incomplete	105	1	0.50	53
Health/Police Department Calls:				
Certainty PSUs	102	1	0.25	26
Non-Certainty PSUs	108	1	0.25	27
Provider Survey	52	1	1.00	52
Youth Survey	950	1	0.75	713
Total	1,660			974

* Burden will vary according to the extent of information about the program that is available from Web sites or other publicly available information.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: September 10, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–23675 Filed 9–16–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under

OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Opioid Treatment Program Accreditation Evaluation—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating the new system of opioid treatment program (OTP) regulation, which relies on accreditation by independent organizations approved by CSAT. This replaces the former system of regulation by the Food and Drug Administration (FDA). Effective May 18, 2001, SAMHSA and CSAT, in conjunction with the FDA and other Federal agencies, issued ''final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction,'' 42 CFR part 8. To date, SAMHSA has approved five organizations to provide accreditation to or conduct accreditation surveys of programs that use methadone and other approved medications to treat opioid addiction: (1) The Commission on Accreditation of Rehabilitation Facilities (CARF), (2) the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), (3) the Council on Accreditation for Children and Family Services (COA), (4) the State of Washington Department of Health and Human Services, Division of Alcohol and Substance Abuse, and (5) the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse. The shift to an accreditation approach is expected to improve the quality of, and access to, OTPs.

An earlier, related study, conducted prior to accreditation, examined the experience of a pilot group of OTPs undergoing the accreditation process with extensive technical assistance provided through CSAT. Now that accreditation has become mandatory, the current study will assess its impact on OTPs, and the field of substance abuse treatment at a critical beginning phase.

The primary purposes of the proposed OTP Accreditation Evaluation are to assess the accreditation process and its cost and impact, and to provide input to CSAT concerning how the process might be improved. Specifically, the OTP Accreditation Evaluation will examine: (1) Processes, barriers, and costs associated with accreditation, (2) administrative and clinical impacts, (3) cost to the federal government for national implementation of the new regulations, and (4) potential policy changes affecting the accreditation-based oversight system.

The evaluation will be accomplished by secondary analysis of existing data as well as by collecting data before and after accreditation, from different sources and using several different data collection methods. Given the great diversity of this relatively small body of programs, the first data collection effort involves administering a questionnaire to all OTPs. The questionnaire is intended to elicit information about the resources programs need to prepare for accreditation and undergo the accreditation survey; services provided; the costs of providing these services; and staff perceptions of the accreditation process. Three versions of the questionnaire will be used to accommodate OTPs' accreditation survey schedules: A pre-accreditation questionnaire, a post-accreditation questionnaire, and a post-only accreditation questionnaire. All OTPs will receive one or two questionnaires, depending on their accreditation survey status. OTPs that have not undergone an accreditation survey at the start of data collection will receive a pre-accreditation questionnaire. These OTPs will also receive a post-accreditation questionnaire six months after their accreditation survey. OTPs that have been accredited for less than four months at the start of data collection will receive a post-only questionnaire and a post-accreditation questionnaire at six months after their accreditation survey. OTPs that have been accredited for more than four months at the start of data collection will receive a post-only questionnaire.

In addition to the OTP survey, data will be obtained from existing sources including SAMHSA surveys such as the National Survey of Substance Abuse Treatment Services (N-SSATS) and the Treatment Episode Data Set (TEDS). These will provide an historical perspective on opioid treatment services and insight regarding the extent of opioid addiction service episodes. Information from the questionnaire administered to all OTPs will be supplemented and validated by more intensive data collection to be conducted with a small sample of OTPs, stratifying on factors determined by the earlier study to be related to OTPs' accreditation experience. Data will be collected from the smaller sample of OTPs through several means over a period up to one year per program (six months before and six months after an accreditation survey): (1) A questionnaire administered on-site to patients to obtain patient perceptions about accreditation and level of satisfaction, (2) chart abstraction by contractor staff of limited patient outcomes data, (3) activity logs to capture the amount of OTP staff time spent by OTP staff in various broad activities, and (4) interviews with OTP staff and related community organizations and with a sample of current patients concerning their perceptions and experience.

The estimated response burden for the proposed OTP accreditation evaluation over a period of two years is summarized below.

Form	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hour burden
Self-administered Pre-Accreditation questionnaire*	400	1	400	1.5	600
Self-administered Post-Accreditation questionnaire*	750	1	750	1.5	1125
Self-administered Post-Accreditation-Only questionnaire*	700	1	700	1.5	1050
Activity logs	420	213	89460	.1	8946
Activity summary worksheet	60	36	2160	1	2160
Service resource log	60	1.5	90	10	900
Chart abstraction (OTP staff time spent pulling charts, *etc.*)	60	1.5	90	1	90
Patient questionnaire	3600	1	3600	.25	900
OTP/community organization staff interview	540	1.5	810	.75	608
SMA interview	48	1	48	.5	24
Total	6638		94508		16403
2-year Annual Average	3319		47524		8202

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: September 10, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–23678 Filed 9–16–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will hold its next meeting in Detroit, MI on October 3, 2003. The HSAC will meet for the purposes of: (1) Welcoming and swearing in new members of the HSAC; (2) discussing current HSAC projects, including a proposed Homeland Security award and the Department of Homeland Security (DHS) Lexicon project; (3) touring DHS facilities at the United States/Canada border; (4) receiving briefings from DHS staff on Departmental initiatives; and (5) holding roundtable discussions with and among HSAC members. This meeting will be partially closed; the open portion of the meeting, for purposes of (1) and (2) above will be held in the Cabot Room of the Marriot Renaissance Center, Detroit, from 9 a.m. to 12 p.m. The closed portion of the meeting, for purposes of (4) and (5) above, will be held at the Marriot Renaissance Center from 12 p.m. to 1 p.m. and from 3:15 p.m. to 5 p.m. Due to transportation and building capacity limitations, as well as security concerns, the public will be unable to accompany the HSAC on the DHS facilities tour.

Public Attendance: Members of the public will be registered to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the meeting provide his or her name, social security number and date of birth no later than 5 p.m. e.d.t., Thursday, September 25, 2003. Please provide the required information to Mike Miron or Jeff Gaynor of the HSAC staff, via e-mail at *HSAC@dhs.gov*, or via phone at (202) 692–4283. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the meeting room, and everyone in attendance must be present and seated by 8:45 a.m.

Basis for Closure: In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. app. 2), the Secretary has issued a determination that portions of this HSAC meeting will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7) and (c)(9)(B) and that, accordingly, these portions of the meeting will be closed to the public.

Public Comments: Members of the public who wish to file a written statement with the HSAC may do so by mail to Mike Miron at the following address: Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528. Comments may also be sent via e-mail to *HSAC@dhs.gov* or via fax to (202) 772–9718.

Dated: September 9, 2003.

Tom Ridge,

Secretary.

[FR Doc. 03–23624 Filed 9–16–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–72]

Notice of Submission of Proposed Information Collection to OMB: Submission Requirements for the Capital Advance Program Section 202/811

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection facilitates processing of all sections 202 and 811 capital advance projects that have not yet been finally closed. Owners who wish to partner with for ''profit-limited partners can participate in the development and management of supportive housing.

DATES: *Comments Due Date:* October 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0470) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained through HUD's Information Collection Budget Tracking System at *http://mf.hud.gov.63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Submission Requirements for the Capital Advance Program Section 202/811.

OMB Approval Number: 2502–0470.

Form Numbers: HUD–90163–CA,90164–CA, 90165–CA, 90166–CA,

90167–CA, 90170–CA, 90171–CA, 90176–CA, 90177–CA, 91732A–CA, 92476A–CA, 92004–F.

Description of the Need for the Information and Its Proposed Use: This collection facilitates processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. Owners who wish to partner with for-profit limited partner can participate in the development and management of supportive housing.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 260; Average response per respondent 9.61; Total annual responses 2,500; Average burden per response 1.93 hrs.

Total Estimated Burden Hours: 4,825.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 11, 2003.

Donna L. Eden,

Director, Office Chief Information Officer, Office of Investments Strategies Policy and Management.

[FR Doc. 03–23694 Filed 9–16–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Grant Agreement and Amendment to Grant Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove an information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by October 17, 2003.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We have submitted a request to OMB to renew its approval of the collection of information for the Grant Agreement and Amendment to Grant Agreement. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0049.

Under the authority of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Clean Vessel Act (16 U.S.C. 777c), the Sportfishing and Boating Safety Act (16 U.S.C. 777g–1), and the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951–3956), we administer several grant programs. We use the information collected in grant applications and agreements to make awards under these grant programs. The information collected on the grant applications and agreements helps us determine whether the estimated cost of the grant project is reasonable, the cost sharing is consistent with the applicable program statutes, and sufficient Federal funds are available for obligation. The State or other grantee uses the grant application forms and agreements to request funds and identify proposed cost sharing. Grantees complete an Amendment to Grant Agreement to request a change to a previously approved Grant Agreement. We use the Amendment to Grant Agreement to revise a previous funding obligation or otherwise document the approval of a revision. The Grant Agreement and Amendment to Grant Agreement that we have submitted to OMB for approval are modified slightly to lesson the burden on the public and to make them easier for the Service to use.

Title: Grant Agreement and Amendment to Grant Agreement.

Approval Number: 1018–0049.

Service Form Numbers: 3–1552 (Grant Agreement) and 3–1591 (Amendment to Grant Agreement).

Frequency of Collection: Annually (Grant Agreement) and on occasion (Amendment to Grant Agreement).

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Total Annual Burden Hours:

Form name	Completion time per form (per hour)	Annual number of responses	Annual hour burden
Grant Agreement	1	3500	3500
Amendment to Grant Agreement	1	1750	1750
Totals		5250	5250

Total Annual Non-Hour Burden: There is no non-hour burden associated with this information collection; there are no filing fees for these forms.

We again invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 11, 2003.

Anissa Craghead,

Information Collection Officer.

[FR Doc. 03–23654 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for the Quino Checkerspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (''we'') announces the availability of the final Recovery Plan for the Quino Checkerspot Butterfly (*Euphydryas editha quino*). The Quino checkerspot butterfly is a subspecies that is currently restricted primarily to clay and granitic soils at lower elevation slopes typically below 1,400 meters (4,600 feet) in open scrub, chaparral, and woodland communities. The populations addressed in this recovery plan are found in western Riverside and southern San Diego Counties proximal to the Mexico international border.

ADDRESSES: Copies of this final recovery plan are available by written request to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009, or by calling 760–431–9440. An electronic copy of this recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Alison Anderson, at the above Carlsbad address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate 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 listed species unless such a plan would not promote the conservation of a particular 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. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The Quino checkerspot butterfly is found in association with topographically diverse open woody canopy landscapes that contain low to moderate levels of non-native vegetation compared to disturbed habitat. Vegetation types that support the Quino checkerspot are coastal sage scrub, open chaparral, juniper woodland, forblands, and native grassland. Soil and climatic conditions, as well as ecological and physical factors, affect the suitability of habitat within the species' range. Urban and agricultural development, invasion of non-native species, habitat fragmentation and degradation, increased fire frequency, and other human-caused disturbances have resulted in substantial losses of habitat throughout the species' historic range. Conservation needs include: (1) Protection and management of suitable and restorable habitat; (2) habitat restoration and enhancement; and (3) establishment of a Quino checkerspot captive breeding program. This plan identifies six recovery units. Recovery units are geographically bounded areas containing extant Quino checkerspot populations that are the focus of recovery actions.

The overall objective of this recovery plan is to reduce the threats to the Quino checkerspot butterfly to the point where it can be reclassified (downlisted) to threatened and ensure the species' long-term conservation. Interim goals include: (1) Protect and manage habitat supporting known current population distributions (occurrence complexes); (2) maintain or create resilient populations; and (3) conduct research necessary to refine recovery criteria.

Downlisting of the Quino checkerspot butterfly is contingent upon the following criteria: (1) Permanently protect habitat within occurrence complexes in a configuration designed to support resilient populations; (2) conduct research on population distribution and dynamics; (3) permanently provide for and implement management of occurrence complexes to restore habitat quality and population resilience; (4) demonstrate evidence of population resilience in core occurrence complexes; (5) document or introduce an additional population in the Lake Matthews site, and demonstrate population resilience for at least one population outside current recovery units; (6) establish and maintain a captive propagation program for purposes of re-introduction and augmentation of wild populations, maintenance of refugia populations, and research; and (7) initiate and implement a cooperative outreach program targeting areas where Quino checkerspot populations are most threatened.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 11, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–23684 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Regional Organization Structure

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning

potential issues in the organizational structure of the BIA's twelve regional offices. Eighteen informational sessions were held throughout the country in June 2003 to brief employees, Indian tribes, and interested parties of the status and structure of the reorganization occurring in the Office of the Assistant Secretary—Indian Affairs, the Bureau of Indian Affairs and the Office of the Special Trustee. The upcoming consultations will provide an opportunity for Indian tribes and interested parties to provide comments regarding the organizational structure of the BIA's twelve regional offices for consideration by the Assistant Secretary—Indian Affairs.

DATES: Comments are due two weeks following the consultation for each region. The meeting dates will be September 24 through October 30, 2003 for all locations listed. Meeting times for all regions are listed.

ADDRESSES: Send, hand-deliver or fax written comments to Regional Office Director at applicable regional office.

FOR FURTHER INFORMATION CONTACT: Appropriate Regional Director or Denise Desiderio at 202–208–6772.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian tribes and other interested parties with an opportunity to comment on potential issues raised by the realignment of regional structures as a result of the reorganization of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs and Office of the Special Trustee. A three-hour block of time will be allotted for Indian tribes and interested parties to comment on the organizational structure in their particular region.

Dates	Region(s)	Time
September 24, 2003	Southern Plains, Michael R. Smith, Regional Director, Southern Plains Regional Office, Bureau of Indian Affairs, WCD Office Complex, P.O. Box 368, Anadarko, OK 73005, Telephone No: (405) 247–6673, Fax No: (405) 247–5611.	9 a.m.–12 p.m.
September 24, 2003	Eastern Oklahoma, Jeanette Hanna, Regional Director, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, 3100 W. Peak Blvd., P.O. Box 8002, Muskogee, OK 74402–8002, Telephone No: (918) 781–4600, Fax No: (918) 781–4604.	1:30 p.m.–4:30 p.m.
September 25, 2003	Midwest, Larry Morrin, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, One Federal Drive, Room 550, Ft. Snelling, MN 55111–4007, Telephone No: (612) 713–4400, Fax No: (612) 713–4401.	9 a.m.–12 p.m.
September 25, 2003	Eastern, Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214, Telephone No: (615) 467–1700, Fax No: (615) 467–1701.	1:30 p.m.–4:30 p.m.
All meetings scheduled for September 24–25 will be held at the Hilton Garden Inn—Tulsa Airport, 7728 East Virgin Court, Tulsa, Oklahoma 74115, telephone (918) 838–1444.		
October 27, 2003	Great Plains, William Benjamin, Acting Regional Director, Great Plains Regional Office, Bureau of Indian Affairs, 115 4th Avenue, SE, Aberdeen, SD 57401, Telephone No: (605) 226–7343, Fax No: (605) 226–7446.	9 a.m.–12 p.m.
October 27, 2003	Rocky Mountain, Keith Beartusk, Regional Director, Rocky Mountain Regional Office, Bureau of Indian Affairs, 316 N. 26th Street, Billings, MT 59101, Telephone No: (406) 247–7943, Fax No: (406) 247–7976.	1:30 p.m.–4:30 p.m.
October 28, 2003	Southwest, Rob Baracker, Regional Director, Southwest Regional Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, NM 87125, Telephone No: (505) 346–7590, Fax No: (505) 346–7517.	9 a.m.–12 p.m.
October 28, 2003	Navajo, Elouise Chicharello, Regional Director, Navajo Regional Office, Bureau of Indian Affairs, P.O. Box 1060, Gallup, NM 87305, Telephone No: (505) 863–8314, Fax No: (505) 863–8324.	1:30 p.m.–4:30 p.m.
October 29, 2003	Pacific, Clay Gregory, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Telephone No: (916) 978–6000, Fax No: (916) 978–6099.	9 a.m.–12 p.m.
October 29, 2003	Northwest, Stanley Speaks, Regional Director, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Telephone No: (503) 231–6702, Fax No: (503) 231–2201.	1:30 p.m.–4:30 p.m.
October 30, 2003	Western, Wayne Nordwall, Regional Director, Western Regional Office, Bureau of Indian Affairs, P.O. Box 10, Phoenix, AZ 85001, Telephone No: (602), 379–6600, Fax No: (602) 379–4413.	9 a.m.–12 p.m.
October 30, 2003	Alaska, Niles C. Cesar, Regional Director, Alaska Regional Office, Bureau of Indian Affairs, P.O. Box 25520, Juneau, AK 99802–5520, Telephone No. (800) 645–8397, Fax No. (907) 586–7252.	1:30 a.m.–4:30 p.m.
All meetings scheduled for October 27–30 will be held at the MGM Hotel, 3799 Las Vegas Blvd, Las Vegas, Nevada 89109, telephone (702) 891–1111.		

Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as facsimile or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the

Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: September 10, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–23628 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–4K–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1610–DQ–020F]

Notice of Availability of the Final Environmental Impact Statement / Proposed Resource Management Plan, Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement/ Proposed Resource Management Plan (FEIS/PRMP), Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, a FEIS/PRMP has been prepared for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Planning Area, Nevada.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**. Instructions for filing of protests are described in the front cover of the FEIS/PRMP and included in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION CONTACT: David C. Cooper, NCA Manager, BLM Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445–2921, (775) 623–1500.

SUPPLEMENTARY INFORMATION: The Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000 [Pub. L. 106–554] (the Act) gave special designation to 1.2 million acres of public lands managed by the Bureau of Land Management (BLM) in northwestern Nevada, collectively known as ''Black Rock-High Rock.'' The Act designated 815,000 acres as a National Conservation Area (NCA) and 752,000 acres as 10 Wilderness Areas (378,000 of the Wilderness acres overlap the NCA). The NCA and associated Wilderness Areas were created specifically to protect one of the last nationally significant segments of the historic emigrant trails used by pioneers to travel from the eastern United States to Oregon and California, and a landscape largely unchanged since the mid-1800s. Black Rock-High Rock contains an array of unique historic, cultural, educational, wildlife, riparian, and wilderness resources, threatened species, and recreational values. The Act also identified wilderness, grazing, and special recreation permit events as valuable existing land uses that are expected to continue.

Designating Black Rock-High Rock as an NCA and Wilderness Areas placed new emphasis and requirements on resource uses in the area. The FEIS/ PRMP has been developed to address these changes. This FEIS/PRMP does not evaluate the designation of the NCA and Wilderness Areas, but rather develops several resource management alternatives that fully comply with the NCA Act and the Wilderness Act and other applicable laws, regulations and policies. The FEIS/PRMP analyzes the environmental consequences associated with implementation of each alternative. Additionally, approximately 15,000 acres in the south playa, 16,000 acres in the Lahontan Cutthroat Trout (LCT) Area, and 3,000 acres included in wilderness access and boundary roads and road corridors located outside the NCA that are not included in the designation are evaluated in the FEIS/ PRMP due to their being contiguous lands with similar planning issues. These designated and adjacent areas, totaling approximately 1,221,000 acres of public lands, are referred to as the planning area.

In addition to other existing laws, regulations and policies, the NCA Act and the Wilderness Act govern land and resource use decisions in 97.4% of the planning area. As a result, the range of alternatives presented in the FEIS/ PRMP and the impacts anticipated from their implementation are more constrained than is typical of BLM management plans.

Consultation, cooperation and communication in the service of conservation have guided the Black Rock-High Rock planning process from its inception. Accordingly, extensive public involvement provided the foundation upon which the FEIS and PRMP were constructed. The FEIS/ PRMP was developed through a collaborative planning process involving two BLM State Offices and two BLM Field Offices, other federal agencies, the State of Nevada Black Rock Planning Team (which assured that State interests, laws and plans were fully considered throughout the planning process), area Tribal Government representatives, representatives of the local communities of Cedarville, California and Empire-Gerlach, Nevada, Modoc County, California, Humboldt County, Nevada, Pershing County, Nevada, and many diverse interests represented on two Resource Advisory Councils (RACs) and a RAC NCA Subgroup formed specifically to participate with BLM in the planning process. Government-to-government consultations were conducted with six Native American Indian Tribal Governments. Four series of public meetings were held in Nevada and California that involved the public in the planning process to the greatest extent possible. Five Black Rock-High Rock planning bulletins were mailed to over 1200 interested parties, and periodic news releases were issued announcing important steps in the planning process. In addition, a planning Web site (*http://www.BlackRockHighRock.org/*) keeps interested members of the public informed and involved. A total of 74 meetings involving participation of other federal agencies, State and Tribal representatives, and interested publics were conducted in Nevada and California.

Copies of the FEIS/PRMP have been sent to affected federal, State and local government agencies, Tribal governments, and to interested parties. Copies of the FEIS/PRMP are available for public inspection at the Web site *http://www.BlackRockHighRock.org/,* at the BLM-Nevada Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV, and at the following repositories: U of Nevada-Reno Getchell Library, Reno NV; Humboldt County Library, Winnemucca NV; BLM-Nevada Carson City Field Office, Carson City NV; BLM-Nevada State Office, Reno NV; Public Library, Gerlach NV; Public Library, Reno NV; Pershing County Public Library, Lovelock NV; Lyon County Library, Dayton NV; Lyon County Library, Fernley NV; BLM-California Surprise Field Office, Cedarville CA; Modoc County Library, Cedarville CA; Modoc County Library, Alturas CA; BLM-California State Office, Sacramento CA; and BLM-California Eagle Lake Field Office, Susanville CA. Persons who are not able to inspect the FEIS/PRMP either on-line or at these locations may request one of a limited

number of printed copies or compact discs (CDs) by contacting the NCA Planning Staff at the Winnemucca Field Office by e-mail to *wfoweb@nv.blm.gov,* by telephone to (775) 623–1500, or by fax to (775) 623–1503. Requests should be directed to the NCA Planning Staff, clearly state that it is a request for a printed copy or CD of the Black Rock-High Rock FEIS/PRMP, and include the name, mailing address and phone number of the requesting party. Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text and creation of a new alternative, the Proposed RMP, to resolve concerns expressed, but did not significantly change proposed land use decisions. Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan/Final EIS may be found at 43 CFR 1610.5. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the part or parts of the plan and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the State Directors' decision is wrong.

All protests must be in writing and mailed to the following address:

Regular Mail: Director (210), Attention: Brenda Williams, PO Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior.

Dated: August 15, 2003.

Terry A. Reed,

Field Manager, Winnemucca Field Office, Bureau of Land Management.

[FR Doc. 03–23763 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–03–1010–BN–241A]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Northwest Colorado Resource Advisory Council (RAC) meeting will be held on October 30 at 10 a.m. at the Battlement Mesa Activity Center, 0398 Arroyo Drive, Parachute, Colorado. Public comment will be from 11 a.m. to 11:30 a.m.

DATES: The Northwest Colorado RAC meeting will be held on October 30, 2003.

FOR FURTHER INFORMATION CONTACT: John Husband, BLM Little Snake Field Office Manager, 455 Emerson St., Craig, Colorado; Telephone 970–826–5000.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

The purpose of the meeting is to finalize the RAC's recommendations for the Sustaining Working Landscapes Initiative.

These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Summary minutes of RAC meetings are maintained in the BLM Western Slope Center Office located at 2815 H Road, Grand Junction, CO 81506, phone (970) 244–3000. Minutes are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: September 9, 2003.

Steven B. Hall,

Western Slope Public Affairs Specialist.

[FR Doc. 03–23681 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG 03–0217; WAW–05324]

Public Land Order No. 7583; Partial Revocation of Executive Order Dated December 14, 1886; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order insofar as it affects 20.68 acres of lands reserved for the Ediz Hook Lighthouse. The lands are no longer needed by the United States Coast Guard for lighthouse purposes.

EFFECTIVE DATE: September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–808–6155.

SUPPLEMENTARY INFORMATION: This order is a record clearing action only for 1.7 acres that have been conveyed out of Federal ownership. The lands will not be opened until a planning review and analysis have been completed to determine if any of the lands need special designation and protection.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

The Executive Order dated December 14, 1886, which reserved lands for lighthouse purposes, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 31 N., R. 6 W.,
Sec. 33, Out Lots 4, 5, and 6, and the westerly 4.89 acres of Out Lot 7.

The areas described aggregate 20.68 acres in Clallam County.

Dated: September 3, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–23692 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; WIES–48137]

Public Land Order No. 7584; Revocation of Executive Order Dated October 19, 1866; Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety, an 1866 Executive Order which reserved 8.8 acres of public land for the Eagle Bluff Light Station. The land is no longer needed by the United States Coast Guard for lighthouse purposes. This order will open 1.21 acres of the formally reserved land to surface entry

EFFECTIVE DATE: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1671.

SUPPLEMENTARY INFORMATION: All of the land, except as described in Paragraph 2, has been conveyed out of Federal ownership. This is a record clearing action only for the land that is no longer in Federal ownership.

Order

By virtue of authority vested in the Secretary of the Interior, including section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order dated October 19, 1866, which reserved public land for lighthouse purposes, is hereby revoked in its entirety.

2. At 10 a.m. on October 17, 2003, the land described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 17, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Fourth Principal Meridian

T. 31 N., R. 27 E.,

Eagle Bluff Light Station Reservation, located in Fractional NE¼ of sec. 17, being more particularly described as:

Beginning at the Triangulation Station ''Eagle Bluff'', 1874, 1934, 1953, T. 31 N., R. 27 E.,

Thence, N. 89°50′ E, 0.227 chains to the WC MC, the place of beginning, S. 49°05′ E., 3.135 chains, to Angle Point #1, N. 38°17′ E., 2.502 chains, to Angle Point #2, N. 40°10′ W., 4.001 chains, to MC on the present shoreline of Green Bay,

Thence with meanders of Green Bay, S. 59°35′ W., 1.14 chains, S. 37°38′ W., 1.90 chains, S. 30°23′ W., 0.15 chains to MC on the present shoreline of Green Bay,

Thence, S. 49°05′ E., 1.160 chains to WC MC, the place of beginning.

The area described contains 1.21 acres in Door County.

Dated: September 3, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–23693 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Tribal Consultation on Participation by the Office of the Special Trustee for American Indians in the Department of the Interior Consolidation of Agency Appraisal Functions

AGENCY: Office of the Special Trustee for American Indians.

ACTION: Notice of tribal consultation meeting.

SUMMARY: Notice is hereby given that the Office of the Special Trustee for American Indians (OST) will conduct consultation meetings to obtain oral and written comments concerning potential issues related to participation by OST in the Department of the Interior plan to consolidate agency appraisal functions.

On June 19, 2003, Secretary of the Interior Gale Norton announced that real estate appraisal functions currently performed by various agencies within the Department would be consolidated by September 30, 2003, in a single office. This action is taken in response to concerns about the objectivity and management of appraisal functions carried out by several agencies within the Department, and documented in reports issued by the Department's Inspector General, the General Accounting Office and other groups.

The goals of a consolidated appraisal organization include: to restore public and consumer confidence in land valuations; to ensure greater appraiser independence for unbiased valuation services that meet the highest professional standards; and a sharing of skills and resources throughout the Department. In addition, the consolidation is expected to provide better coordination and consistency of appraisal guidance, enhanced professional development of appraisers, and greater efficiencies in contract monitoring and development.

Since July 2003, OST has participated in the Departmental action team composed of appraisal and realty specialists from affected offices within the Department. The action team has been meeting to determine the best way to accomplish the consolidation, with as minimal disruption to appraisal services as possible. Participation on this action team, and additional discussions with the Department, indicate that it would be in the best interest of the OST appraisal program to join this consolidation. Specific issues unique to the appraisal of Indian trust assets as conducted by the OST Office of Appraisal Services, and by self-governance and self-determination tribes, however, require special consideration. OST is planning tribal consultation meetings to discuss these issues.

DATES: All comments are due by November 7, 2003. The meeting dates are September 24, 2003 and October 28, 2003 at the times and locations listed below.

ADDRESSES: Send or hand-deliver written comments to: Carrie Moore, Office of the Special Trustee for American Indians, 1849 C Street, NW., Suite 5140, Washington, DC 20240. Submissions by facsimile should be sent to (202) 208–7545.

FOR FURTHER INFORMATION CONTACT: Carrie Moore at (202) 208–4866 or Pat Gerard at (505) 816–1313.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian tribes and other interested parties with the opportunity to comment on issues relevant to OST participation in the the Department of the Interior consolidation of bureau and agency appraisal programs.

Two, three-hour blocks of time will be allotted at each meeting for Indian tribes and interested parties to comment on this issue. On September 24, 2003, the meetings will be held from 9 a.m.–12 p.m., and from 1:30 p.m.–4:30 p.m., in Tulsa, Oklahoma.

Hotel information: Hilton Garden Inn—Tulsa Airport, 7728 East Virgin Court, Tulsa, Oklahoma 74115, telephone (918) 838–1444.

Two additional meetings will occur on October 28, 2003 from 9 a.m.–12 p.m., and from 1:30 p.m.–4:30 p.m., in Las Vegas, Nevada.

Hotel information: MGM Hotel, 3799 Las Vegas Blvd, Las Vegas, Nevada 89109, telephone (702) 891–1111.

Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Special Trustee for American Indians by 209 DM 11.

Dated: September 8, 2003.

Victor Christiansen,

Acting Director, Budget, Finance and Administration, Office of the Special Trustee for American Indians.

[FR Doc. 03–23627 Filed 9–16–03; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,432]

Agilent Technologies, Inc., Network Systems Test Division, Colorado Springs, Colorado; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 31, 2003, in response to a petition filed by a state agency official on behalf of workers at Agilent Technologies, Inc., Network Systems Test Division, Colorado Springs, Colorado.

The petitioning group of workers is included in an ongoing petition investigation, TA–W–51,753, for which a determination has not yet been issued. Further investigation in this case would serve no purpose. Consequently, the investigation of this petition is terminated.

Signed at Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23720 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06385]

Ameriphone, Inc., a Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, California; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Ameriphone, Inc. v. U.S. Secretary of Labor* (Court No. 03–00243).

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter ''Ameriphone''), was issued on September 11, 2002 and published in the **Federal Register** on September 27, 2002 (67 FR 61160). The denial was based on the finding that the workers at the subject facility did not produce an article as required by section 250 of the Trade Act of 1974.

On March 10, 2003, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–6385 and published in the **Federal Register** on March 18, 2003 (68 Fed. Reg. 12938).

In the request for reconsideration, the petitioner alleged that the workers were engaged in the final phase of production (inspecting, testing and modifying products) as well as prototype design and production. In the reconsideration investigation, the Department found that the articulated functions constituted a negligible portion of the work performed at the subject facility and that the workers were, in fact, service providers.

On voluntary remand, the Department contacted the company and requested detailed information regarding the workers' functions at the subject facility. The newly obtained information revealed that workers at the subject facility were engaged in production. The new information also revealed that a significant portion of the production performed at the subject facility was shifted to Mexico impacting workers at the subject plant.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that a shift of production to Mexico of products like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers of Ameriphone, Inc., Garden Grove, California. In accordance with the provisions of the Act, I make the following certification:

''All workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California, who became totally or partially separated from employment on or after June 24, 2001 through two years of this certification, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 18th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23730 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,548]

Ashland Chemicals, Philips Semiconductors Location, San Antonio, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 2003 in response to a worker petition which was filed on behalf of workers at Ashland Chemicals, Philips Semiconductors location, San Antonio, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23706 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,553]

Berwick Weaving, Inc., Berwick, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August

13, 2003, in response to a worker petition filed on behalf of workers at Berwick Weaving, Inc., Berwick, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23716 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525E]

The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group, now Known as Labinal-Corinth, Inc., Corinth, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Corinth, Texas. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49039–49040).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of large commercial aircraft and the components thereof.

New information shows that Labinal Snecma Group purchased Boeing—Corinth Company on June 6, 2003 and is now known as Labinal-Corinth, Inc. Some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Labinal-Corinth, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group who were adversely affected by increased imports.

The amended notice applicable to TA-W–40,525E is hereby issued as follows:

All workers of The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group, now known as Labinal-Corinth, Inc., Corinth, Texas (TA–W–40,525E) who became totally or partially separated from employment on or after February 25, 2002, through March 18, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23728 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,495]

Carey Farmer Setnet Operation, Eagle River, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a petition filed by a company official on behalf of workers of the Carey Farmer Set Net Operation, Eagle River, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 29th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23708 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,669]

Carolina Shoe Company, Morganton, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 22, 2003, in response to a worker petition filed on behalf of workers at Carolina Shoe Company, Morganton, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23702 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,240]

Chevron Products Company, Roosevelt, Utah; Notice of Revised Determination On Reopening

The Department of Labor reopened the petition investigation for workers of the subject firm.

The TAA petition filed with the Department on behalf of workers of Chevron Products Company, Roosevelt, Utah, was initiated on February 4, 2000. The petition investigation concluded that the subject firm did not produce an article and therefore its workers were not eligible for certification. The negative determination was issued on February 17, 2000, and published in the **Federal Register** on March 17, 2000 (65 FR 12647).

However, the Department determines on reopening that because Chevron Products Company, Roosevelt, Utah is a wholly owned subsidiary of Chevron USA Production Company, the Department finds that the workers' firm is actually Chevron USA Production Company. The two firms constituted an integrated production process the final products of which are crude oil and natural gas. The Department, on July 6, 1999, issued a certification of eligibility for that inquiry and the inquiry into whether the workers qualify as secondary workers under the Statement of Administrative Action. Since the workers were a part of a firm which produces an article, crude oil and natural gas, under Labor's existing rules, the characterization of the workers as production or service workers becomes irrelevant because that distinction only arises in cases where the workers are employed by separate firms. Similarly, since the workers are part of the firm that produced the article, they cannot be

secondary workers, who, by definition, are employed by separate firms.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil produced by Chevron USA Production and its affiliate Chevron Products Company, Roosevelt, Utah, contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Chevron Products Company, Roosevelt, Utah, who became totally or partially separated from employment on or after January 4, 1999, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 2nd day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23710 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,508]

Crystal Creative Products Maysville, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Crystal Creative Products, Maysville, Kentucky (TA–W–52,508).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23717 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,693]

CTS Corporation, Elkhart, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2003, in response to a worker petition filed by United Automobile, Aerospace & Agricultural Implement Workers of America, Local 941, on behalf of workers at CTS Corporation, Elkhart, Indiana.

A petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 29th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23701 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,514]

Dynacast, Inc., Yorktown Heights, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003, in response to a worker petition filed by a company official on behalf of workers at Dynacast, Inc., Yorktown Heights, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23707 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,411]

Elastic Corporation of America, Inc., Asheboro, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 28, 2003 in response to a worker petition filed by a company official on behalf of workers at Elastic Corporation of America, Inc., Asheboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23725 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,606]

Fishing Vessel (F/V) Emerald Sea, Kodiak, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003 in response to a petition filed by a company official on behalf of workers of F/V Emerald Sea, Kodiak, Alaska.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23714 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,494]

Fishing Vessel (F/V) Lumi, Seward, Alaska; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003, in response to a petition filed by a company official on behalf of the group of workers of Fishing Vessel (F/V) Lumi, Seward, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level. To continue with the investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23719 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,618]

Johnson Hosiery Mills, Inc., an Affiliate of Prewett Associated Mills, Ft. Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a worker petition filed by a company official on behalf of workers at Johnson Hosiery Mills, Inc., an affiliate of Prewett Associated Mills, Ft. Payne, Alabama.

The company official has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 29th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23703 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,552]

Joy Mining Machinery, Abingdon, Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 2003, in response to a worker petition filed on behalf of a worker at Joy Mining Machinery, Abingdon, Virginia.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation has been terminated.

Signed in Washington, DC, this 22nd day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23723 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,348]

Labinal-Corinth, Inc., Formerly Known as the Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group, Corinth, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 18, 2003 in response to a worker petition which was filed on behalf of workers at Labinal-Corinth, Inc., Corinth, Texas.

An active certification covering the petitioning group of workers is already in effect (TA-W–40,525E, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23727 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,621]

Lala Ellen Knitting, Ft. Payne, Alabama; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a petition filed by a company official on behalf of workers at Lala Ellen Knitting, Ft. Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23721 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,616]

McKeehan Hosiery Mills, Inc., A Affiliate of Prewett Associated Mills Ft. Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2003 in response to a worker petition which was filed by a company official on behalf of workers at McKeehan Hosiery Mills, Inc., an affiliate of Prewett Associated Mills, Ft. Payne, Alabama (TA–W–52,616).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23704 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,607]

Nibco, Inc., Central Tooling Services Center, Elkhart, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2003, in response to a worker petition filed by the United Steelworkers of America, Local 14810 on behalf of workers at NIBCO, Inc., Central Tooling Services Center (CTS), Elkhart, Indiana.

A negative determination applicable to the petitioning group of workers was issued on August 12, 2003 (TA–W–52,327). No new information is evident which would result in a reversal of the Department's previous determination.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of August 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23713 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 19th day of August 2003.

Timothy Sullivan,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/11/2003 and 08/15/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,493	North Pacific Processors, Inc., (Comp)	Cordova, AK	08/11/2003	08/05/2003
52,494	F/V Lumi (Comp)	Seward, AK	08/11/2003	06/16/2003
52,495	Carey Farmer (Comp)	Eagle River, AK	08/11/2003	08/07/2003
52,496	Mann Edge Tool Co. (Wkrs)	Lewistown, PA	08/11/2003	07/14/2003
52,497	Renfro Corp. (Comp)	Pulaski, VA	08/11/2003	08/06/2003
52,498	Smart Modular Technologies, Inc. (Comp)	Wilmington, MA	08/11/2003	08/07/2003
52,499	Pennsylvania Electric Coil Ltd. (USWA)	Glassport, PA	08/11/2003	08/06/2003
52,500	Volex, Inc. (Wkrs)	Conover, NC	08/11/2003	08/08/2003
52,501	Hexcel Corp. (SC)	Anderson, SC	08/11/2003	07/21/2003
52,502	Norwood Promotional Products (MN)	Sleepy Eye, MN	08/11/2003	08/07/2003
52,503	Carolina Mills, Inc. (Comp)	Newton, NC	08/11/2003	08/07/2003
52,504	Wirco Castings, Inc. (Comp)	New Athens, IL	08/11/2003	08/07/2003
52,505	Flextronics Logistics (Comp)	Mt. Juliet, TN	08/11/2003	08/08/2003
52,506	K and S Interconnect, Inc. (Comp)	Dallas, TX	08/11/2003	07/11/2003
52,507	Carris Financial Corp. (Comp)	Brandon, VT	08/11/2003	08/07/2003
52,508	Crystal Creative Products (Comp)	Maysville, KY	08/11/2003	07/24/2003
52,509	A.T. Cross Company (Comp)	Lincoln, RI	08/11/2003	08/06/2003
52,510	General Binding Corp. (Comp)	Bonneville, MS	08/11/2003	07/30/2003
52,511	Cooper Crouse-Hinds Myers-Hubs (Comp)	Montebello, CA	08/11/2003	08/05/2003
52,512	Triquint Optoelectronics (Comp)	Breinigsville, PA	08/11/2003	07/29/2003
52,513	Del Monte Fresh Produce (ILWU)	Honolulu, HI	08/11/2003	07/28/2003
52,514	Dynacast, Inc. (Comp)	Yorktown Hgts., NY	08/11/2003	07/25/2003
52,515	Buffalo China (GMPPA)	Buffalo, NY	08/11/2003	07/27/2003
52,516	John S. Tilley Ladders Co., Inc. (The) (USWA)	Watervliet, NY	08/11/2003	07/30/2003
52,517	Solutia, Inc. (Comp)	Decatur, AL	08/11/2003	08/05/2003
52,518	Paper Converting Machine Co. (UAW)	Green Bay, WI	08/11/2003	08/01/2003
52,519	Holm Industries, Inc. (Comp)	Galesburg, IL	08/12/2003	08/11/2003
52,520	F/V Pamela Dawn (Comp)	Kodiak, AK	08/12/2003	08/08/2003
52,521	Novell, Inc. (Wkrs)	Provo, UT	08/12/2003	07/17/2003
52,522	Relax-R Corp. (Wkrs)	Milton, VT	08/12/2003	08/06/2003
52,523	Hanes Dye and Finishing Company (Comp)	Winston-Salem, NC	08/12/2003	08/11/2003
52,524	Viceroy Gold Corporation (Comp)	Searchlight, NV	08/12/2003	08/11/2003

APPENDIX—Continued

[Petitions instituted between 08/11/2003 and 08/15/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,525	Alcatel (Wkrs)	Spokane, WA	08/12/2003	08/05/2003
52,526	Halliburton (Comp)	Prudhoe Bay, AK	08/12/2003	07/29/2003
52,527	MOCAP, Inc. (Comp)	Farmington, MO	08/12/2003	08/06/2003
52,528	A and E Products (Wkrs)	Ringtown, PA	08/12/2003	08/01/2003
52,529	Marshall Gas Controls (Comp)	San Marcos, TX	08/12/2003	07/31/2003
52,530	Flour Industrial Services (Wkrs)	Kannapolis, NC	08/12/2003	08/11/2003
52,531	Solectron Global Services (Wkrs)	Beaverton, OR	08/12/2003	07/17/2003
52,532	EXFO Burleigh Products Group, Inc. (Wkrs)	Victor, NY	08/12/2003	07/09/2003
52,533	GECP Lighting (Comp)	Mattoon, IL	08/12/2003	08/04/2003
52,534	Advanced Cast Products, Inc. (Comp)	Meadville, PA	08/12/2003	08/11/2003
52,535	Admanco, Inc. (Comp)	Ripon, WI	08/12/2003	08/11/2003
52,536	WinTron Technologies (Comp)	Howard, PA	08/12/2003	08/08/2003
52,537	Best Buy Co., Inc. (MN)	Eden Prairie, MN	08/12/2003	08/08/2003
52,538	Custom Tool and Design, Inc. (Wkrs)	Erie, PA	08/12/2003	07/23/2003
52,539	Xerox Corporation (Wkrs)	Webster, NY	08/12/2003	07/24/2003
52,540	IRC Acquisition (Wkrs)	Corinth, MS	08/12/2003	07/29/2003
52,541	Alabama Metal Industries Corp. (Wkrs)	Liberty, MO	08/12/2003	08/05/2003
52,542	Columbus Ind., Inc. (Wkrs)	Ashville, OH	08/12/2003	07/29/2003
52,543	Arch Chemicals, Inc. (Wkrs)	Lake Charles, LA	08/12/2003	07/21/2003
52,544	Alstom Power (Comp)	Easton, PA	08/12/2003	08/11/2003
52,545	Bose Corporation (Wkrs)	Framingham, MA	08/12/2003	07/25/2003
52,546	Baxter International (Comp)	Rochester, MI	08/12/2003	08/04/2003
52,547	Cooper-Atkins Corporation (Comp)	Middlefield, CT	08/13/2003	08/11/2003
52,548	Ashland Chemicals (Wkrs)	San Antonio, TX	08/13/2003	08/12/2003
52,549	Broadway and Son Electric, Inc. (Comp)	China Grove, NC	08/13/2003	08/11/2003
52,550	Crane Valve (Wkrs)	Washington, IA	08/13/2003	08/11/2003
52,551	Mueller Gas Products (IAM)	Waynesboro, TN	08/13/2003	08/12/2003
52,552	Joy Mining Machinery (Wkrs)	Abingdon, VA	08/13/2003	07/14/2003
52,553	Berwick Weaving, Inc. (Wkrs)	Berwick, PA	08/13/2003	08/11/2003
52,554	JohnCo Hosiery, Inc. (Comp)	Fort Payne, AL	08/14/2003	08/11/2003
52,555	Cherokee Hosiery Mill, Inc. (Comp)	Fort Payne, AL	08/14/2003	08/11/2003
52,556	Visteon Systems LLC (Wkrs)	Lansdale, PA	08/14/2003	08/03/2003
52,557	Inflation Systems Inc. (Wkrs)	Moses Lake, WA	08/14/2003	08/13/2003
52,558	Edison Fashion, Inc. (AWJB)	Bronx, NY	08/15/2003	08/11/2003
52,559	Pillowtex (Comp)	Kannapolis, NC	08/15/2003	08/15/2003
52,560	Minnesota Ore Operations (MN)	Mt. Iron, MN	08/15/2003	08/13/2003
52,561	Benchmark Electronics (MN)	Winona, MN	08/15/2003	08/14/2003
52,562	Rothtec Engraving Corp. (Comp)	Spartanburg, SC	08/15/2003	08/12/2003
52,563	Sheet Metal Specialities, Inc. (Comp)	Waxhaw, NC	08/15/2003	08/13/2003
52,564	Prewett Mills Distribution Center (Comp)	Ft. Payne, AL	08/15/2003	08/12/2003
52,565	John Manville (USWA)	Vienna, WV	08/15/2003	08/08/2003
52,566	Copperweld (USWA)	Piqua, OH	08/15/2003	08/06/2003
52,567	Agilent Technologies, Inc. (Wkrs)	Colorado Spgs., CO	08/15/2003	08/11/2003
52,568	DAY International, Inc. (Comp)	Greenville, SC	08/15/2003	08/07/2003
52,569	Hasler, Inc. (Wkrs)	Shelton, CT	08/15/2003	07/18/2003
52,570	DePuy Orthopedic (Comp)	Albuquerque, NM	08/15/2003	08/13/2003
52,571	Dean Company (The) (Wkrs)	Princeton, WV	08/15/2003	07/30/2003
52,572	Allsteel, Inc. (Comp)	W. Hazelton, PA	08/15/2003	08/14/2003
52,573	Gentry Mills, Inc. (Wkrs)	Albemarle, NC	08/15/2003	08/11/2003

[FR Doc. 03–23695 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,562]

Rothtec Engraving Corp., Spartanburg, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 15, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Rothtec Engraving Corporation, Spartanburg, South Carolina (TA–W–52,562).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23715 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,408]

Texas Steel Partners, Ft. Worth, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 28, 2003, in response to a petition filed by an authorized State of Texas representative on behalf of workers at Texas Steel Partners, Ft. Worth, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23726 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,814]

Tingley Rubber Corp., South Plainfield, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 13, 2001, applicable to workers of Tingley Rubber Corporation, South Plainfield, New Jersey. The notice was published in the **Federal Register** on September 21, 2001 (66 FR 39814).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of protective rubber and PVC footwear until the company ceased production in August 2003.

New information shows that workers will be retained at the subject firm beyond the September 13, 2003 expiration date of the certification. These employees will complete the decommissioning of the subject plant until their termination on September 26, 2003. Based on these findings, the Department is amending the certification to extend the September 13, 2003 expiration date for TA–W–39,814 to read September 26, 2003.

The intent of the Department's certification is to include all workers of Tingley Rubber Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,814 is hereby issued as follows:

''All workers of Tingley Rubber Corporation, South Plainfield, New Jersey, who became totally or partially separated from employment on or after July 27, 2000, through September 26, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 15th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23729 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,625]

TRW Automotive, Rushford, Minnesota; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 20, 2003, in response to a worker petition filed by a State agency representative on behalf of workers at TRW Automotive, Rushford, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23711 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,610]

TRW Automotive, Winona, Minnesota; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003 in response to a worker petition filed by a State agency representative on behalf of workers at TRW Automotive, Winona, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23712 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,581]

Vaughan Furniture Company, Inc., Johnson City, Tennessee; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003, in response to a worker petition filed by a company official on behalf of workers at Vaughan Furniture Company, Inc., Johnson City, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23722 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,507]

Vermont Tubbs, Inc., A Division of Carris Financial Corporation, Brandon, Vermont; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a petition filed by a company official on behalf of workers at Vermont Tubbs, Inc., a division of Carris Financial Corporation, Brandon, Vermont.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23718 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A)

All of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B)

Both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2) (A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–52,287; Vesuvius USA, Employed at International Steel Group, Cleveland, OH

TA–W–52,359; Swag-Nit, Inc., Mt. Holly, NC

TA–W–52,363; FSI International, Allen, TX

TA–W–52,139; Discovery Plastics, Inc, Albany, OR

TA–W–52,277; Hubbell, Inc., Killark Div., Louisiana, MO

TA–W–52,192; Polymark Corp., Cincinnati, OH

TA–W–52,210; Woodgrain Millwork, White City, OR

TA–W–52,301; Edgcomb Metals Co., LLC, Detroit Plant, a div. of Macsteel Service Centers USA, Roseville, MI

TA–W–52,304; Standard Register Co., Kirksville, MO

TA–W–52,321; Anvil International, Inc., Kearny Plant, dba Beck Manufacturing, South Kearny, NJ

TA–W–52,362; Cookson Electronics, Assembly Material Group, a div. of Frys Metals, Inc., dba Alpha Metals, Jersey City, NJ

TA–W–51,939; Standard Mercerizing and Specialty Yarn, LLC., formerly known as Standard Coosa Industries, Inc., Chattanooga, TN

TA–W–52,175; Froedtert Malt Co., Inc., Milwaukee, WI

TA–W–52,339; Advanced Manufacturing and Development, Inc., dba Metalfx, Willits, CA

TA–W–52,462; Fishing Vessel (F/V) Joseph Booney, Cordova, AK

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–52,525; Alcatel Internetworking (PE), Spokane, WA

TA–W–52,589; Hunter Corp., Portage, IN

TA–W–52,645; KBK Management Associates, Youngstown, OH

TA–W–52,537; Best Buy Enterprise Services, Inc., Information Systems Department, Data Warehouse Group, Eden Prairie, MN

TA–W–52,373; Agilent Technologies, Inc., Information Technology Div., Fort Collins, CO

TA–W–52,380; Precision Roll Grinders, Inc., Allentown, PA

TA–W–52,531; Stream International, Inc., Beaverton, OR

TA–W–52,539; Xerox Corp., Logistics Customer Supply Center, Webster, NY

TA–W–52,318; GE Osmonics, Inc., a div. of General Electric Co., Minnetonka, MN

TA–W–52,379; Maritz, Fenton, MO

TA–W–52,471; The Eureka Co., Product Department, Bloomington, IL

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment declines) have not been met.

TA–W–52,520; Fishing Vessel (F/V) Pamela Dawn, Kodiak, AK

The investigation revealed that criteria (a)(2)(A) (I.C) (increased

imports) and (a)(2)(B) (II.C) (has shifted production to a foreign country) have not been met.

TA–W–52,440; Thermo King Corp., North American Div., Louisville, GA

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a)(2)(B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–52,145; Philips Elmet, Lewiston, ME

TA–W–52,400; Kollsman, Inc., a wholly owned subsidiary of EFW, Inc., Merrimack, NH

TA–W–52,412; Lear Corp., SSD Div., Elsie, MI

TA–W–52,434; De La Rue Cash Systems, Cash Systems Div., Watertown, WI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–52,319; Akron Porcelain and Plastics Co., Inc., Akron, OH: June 20, 2002.

TA–W–52,056; Dynamic Metal Forming, Inc., Scottdale, PA: June 13, 2002.

TA–W–52,213 & A, B; Hoover Co., Main Plant/Distribution Center, North Canton, OH, Industrial Park, North Canton, OH and Plant #2, Canton, OH: June 25, 2002.

TA–W–52,364; Meridian Beartrack Co., Salmon, ID: August 21, 2003.

TA–W–52,371 & A; Hickory Chair Co., Plant #7, a div. of Thomasville Furniture Industries, Inc., Hickory, NC and Plant #20, a division of Thomasville Furniture Industries, Inc., Hickory, NC: July 21, 2002.

TA–W–52,436; Empire Steel Castings, a div. of Atchison Casting Corp., Lauredale, PA: July 29, 2002.

TA–W–52,397; Oxford Textile, Inc., Oxford, NJ: July 10, 2002.

TA–W–52,435; Quaker Alloy, Inc., a div. of Atchison Casting Corp., Myerstown, PA: July 29, 2002.

TA–W–52,445; Baron Drawn Steel Corp., Toledo, OH: July 21, 2002.

TA–W–52,240; LTD Industries, Inc., Lewistown, IL: June 20, 2002.

TA–W–52,242; Louisiana Pacific Corp., Belgrade, MT: July 7, 2002.

TA–W–52,243; Nestle Purina Pet Food, St. Joseph, MO: July 1, 2002.

TA–W–52,316; Louisiana Pacific Corp., formerly Crown Pacific, Bonners Ferry, ID: June 26, 2002.

TA–W–52,331; Advanced Micro Devices (AMD), Lone Star Fab 14 and 15, including leased workers of Volt Service Group, Austin, TX: April 15, 2002.

TA–W–52,376; Delphi Corp., Delphi Energy Chassis Systems Div., Kettering, OH: July 22, 2002.

TA–W–52,377; Weyerhaeuser Co., Rothschild Mill, Rothschild, WI: July 23, 2002.

TA–W–52,406; Major Wire and Conductor, Chicopee, MA: July 17, 2002.

TA–W–52,663; Anderson Pattern, Inc., Muskegon Heights, MI: April 20, 2002.

TA–W–51,803; North American Cronite, Inc., div. of AFE Technologies, formerly HT Alloys Div. of North American Cronite, Inc., North Ridgeville, OH: May 9, 2002.

TA–W–52,146; Bruce Furniture Industries, LLC, Bruce, MS: June 6, 2002.

TA–W–52,308; Cal Quality Electronics, Inc., Santa Ana, CA: July 15, 2002.

TA–W–52,174 & A; Elkem Metals Co., Ferrosilicon Div., Alloy, WV and Silicon Div., Alloy, WV: June 25, 2002.

TA–W–52,269; L.A. Darling Co., Paragould, AR: July 3, 2002.

TA–W–52,286; L.A. Darling Co., Wood Div., Piggot, AR: June 11, 2002.

TA–W–52,296; L.A. Darling Co., Metal Div., Corning, AR: July 14, 2002.

TA–W–52,302; Dominion Apparel, a div. of Grayson Properties Corp., Galax, VA: July 14, 2002

TA–W–52,356; Jo-Bo, Inc., Georgetown, SC and Myrtle Beach, SC: June 30, 2002.

TA–W–52,370; Thomson Crown Wood Products, including leased workers of Ablest Staffing, Mocksville, NC: July 14, 2002.

TA–W–52,398 & A, B; American Racing Equipment, Inc., Plant I, a subsidiary of Noranda, Rancho Dominquez, CA and Plant II, a subsidiary of Noranda, Rancho Dominquez, CA and Gardena Plant, a subsidiary of Noranda, Gardena, CA: July 17, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–52,344; Green Bay Packaging, Inc., Coated Products Div., Green Bay, WI: July 3, 2002.

TA–W–52,439; Hudson, RCI, Voldyne Product Div., Temecula, CA: July 30, 2002.

TA–W–52,557; Inflation Systems, Inc., Moses Lake Operations, Moses Lake, WA: August 13, 2002.

TA–W–52,295; Breed Steering Systems, Inc., Quality Assurance Lab, Brownsville, TX: July 8, 2002.

TA–W–52,382; Capital Mercury Apparel, Ltd, Mar-Bax Shirt Company Div., Gassville, AR: July 23, 2002.

TA–W–52,448; T.S. Trim Industries, Inc., Athens Div., Athens, OH: August 1, 2002.

TA–W–52,455; Waterloo Industries, Inc., Including Leased Workers of Staffmark, Pocahontas, AR: July 24, 2002.

TA–W–52,519; Holm Industries, Inc./ ILPEA, Inc., Galesburg, IL: August 11, 2002.

TA–W–51,988; Vishay-North American Capacitor Company, formerly North American Capacitor Company, a subsidiary of Vishay Intertechnology, Greencastle, IN: June 6, 2002.

TA–W–52,054; Coin Acceptors, Inc., dba Coinco, Mountain View Fabricators Div., Mountain View, MO: June 13, 2002.

TA–W–52,071; Colson Plastics, a div. of Colson Caster Corp., Monette, AR: June 16, 2002.

TA–W–52,427; Dan River, Inc., Danville, VA: July 14, 2002.

TA–W–52,438; Consolidated Fabricators, Inc., Clinton, SC: July 17, 2002.

TA–W–52,088; Avondale Mills, Inc., Bevelle Plant, Alexander City, AL: June 13, 2002.

TA–W–52,372; Code Systems, Inc., formerly Code Alarm, Inc., a wholly-owned subsidiary of Audiovox Electronics Corp., including leased workers of Forge Industrial Staffing, Troy, MI: July 21, 2002.

TA–W–52,390; Eaton Corp., Automotive PSCO Div., including leased workers of Kelly Services, Ann Arbor, MI: July 11, 2002.

TA–W–52,648; Wall Repair Systems, Inc., dba Step Savers, including leased workers of Spectral Contractors, Inc., Vancouver, WA: August 15, 2002.

TA–W–52,532; Exfo Burleigh Products Group, Inc., Victor, NY: July 12, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–52,419; Nestaway, a div. of Axia, Inc., Cleveland, OH: July 16, 2002.

I hereby certify that the aforementioned determinations were issued during the months of August. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 3, 2003.

Terrence Clark,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–23709 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,556]

Visteon Systems, LLC, Lansdale, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 14, 2003 in response to a worker petition filed on behalf of workers at Visteon Systems, LLC, Lansdale, Pennsylvania.

The petition was not signed by each of the three workers submitting the petition and has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC this 28th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23705 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,500]

Volex Inc., Conover, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed on behalf of workers at Volex, Inc., Conover, North Carolina.

A petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23724 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of September 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/18/2003 and 08/22/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
52,574	Waggoner/Parker Fisheries (Wkrs)	Kenai, AK	08/18/2003	08/12/2003
52,575	Volex, Inc. (Wkrs)	Conover, NC	08/18/2003	08/13/2003
52,576	FMC Measurement Solutions (UAW)	Erie, PA	08/18/2003	08/01/2003
52,577	Allen Edmonds (Wkrs)	Milwaukee, WI	08/18/2003	08/14/2003
52,578	Goodyear Tire and Rubber Company (Wkrs)	Cartersville, GA	08/18/2003	08/01/2003
52,579	Wellington Synthetic Fibers (Comp)	Leesville, SC	08/18/2003	08/12/2003
52,580	Irwin-Hodson Metal Manufacturing, LLC (Comp)	Portland, OR	08/18/2003	08/13/2003
52,581	Vaughan Furniture Company (Comp)	Johnson City, TN	08/18/2003	08/06/2003
52,582	AT and T Wireless Services, Inc. (CA)	Livermore, CA	08/18/2003	08/05/2003
52,583	VF Jeanswear Limited Partnership (Comp)	Ada, OK	08/18/2003	08/04/2003
52,584	Siebel Systems (CA)	Emeryville, CA	08/18/2003	08/06/2003
52,585	Oregon Woodworking Co. (OR)	Bend, OR	08/18/2003	08/14/2003
52,586	Thantex Specialities (Comp)	Abbeville, SC	08/18/2003	07/23/2003
52,587	Ramtex, Inc. (Comp)	Ramseur, NC	08/18/2003	08/06/2003
52,588	Paxar Corporation (Comp)	Lenoir, NC	08/18/2003	08/05/2003
52,589	Hunter Corporation (Comp)	Portage, IN	08/18/2003	08/11/2003
52,590	Delta International Machinery (Comp)	Tupelo, MS	08/18/2003	08/01/2003
52,591	Kentucky Derby Hosiery (Wkrs)	Mount Airy, NC	08/18/2003	08/08/2003
52,592	Cincinnati Advertising, LLC (OH)	Springdale, OH	08/18/2003	08/05/2003
52,593	Implementation Strategies, Inc. (Comp)	New York, NY	08/18/2003	08/05/2003
52,594	Squires Hardwoods, Inc. (Comp)	Shannon, NC	08/18/2003	07/30/2003
52,595	Squires Hardwoods, Inc. (Comp)	Woonsocket, RI	08/18/2003	08/14/2003

APPENDIX—Continued

[Petitions instituted between 08/18/2003 and 08/22/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
52,596	Photronics, Inc. (Comp)	Milpitas, CA	08/18/2003	08/04/2003
52,597	Sure-Fit, Inc. (Wkrs)	Allentown, PA	8/18/2003	8/13/2003
52,598A	Minacs (Comp)	Swartz Creek, MI	8/18/2003	7/18/2003
52,598	Minacs (Comp)	Flint, MI	8/18/2003	7/18/2003
52,599	Ruppe Hosiery Inc. (Comp)	Kings Mountain, NC	8/18/2003	8/07/2003
52,600	Kelly Servicers (Wkrs)	Sherman, TX	8/18/2003	8/13/2003
52,601	Congress Industries (UNITE)	Hawthorne, NJ	8/18/2003	7/30/2003
52,602	Reed-Rico (MA)	Holden, MA	8/18/2003	7/25/2003
52,603	Medite Division of Sierra Pine (Wkrs)	Medford, OR	8/19/2003	8/18/2003
52,604	F/V Seven Sons (Comp)	Cordova, AK	8/19/2003	8/14/2003
52,605	F/V Valli (Comp)	Naknek, AK	8/19/2003	7/29/2003
52,606	Fishing Vessel (F/V) Emerald Sea (Comp)	Kodiak, AK	8/19/2003	8/14/2003
52,607	NIBCO, Inc. (USWA)	Elkhart, IN	8/19/2003	8/18/2003
52,608	Fruit of the Loom (Comp)	Harlingen, TX	8/19/2003	8/11/2003
52,609	Coastal Lumber Company (Wkrs)	Hazelton, WV	8/19/2003	8/13/2003
52,610	TRW Automotive (MN)	Winona, MN	8/19/2003	8/15/2003
52,611	Guardian Industries Corp (Comp)	Lewistown, PA	8/19/2003	8/18/2003
52,612	Solectron (Comp)	Creedmoor, NC	08/19/2003	08/15/2003
52,613	ITT Industries (Comp)	Loveland, CO	8/19/2003	8/14/2003
52,614	Watlow Controls (MN)	Winona, MN	8/19/2003	8/15/2003
52,615	Underwriters Laboratories (Wkrs)	Camas, WA	8/19/2003	8/13/2003
52,616	McKeehan Hosiery Mill, Inc. (Comp)	Fort Payne, AL	8/19/2003	8/11/2003
52,617	Wee Socks (Comp)	Fort Payne, AL	8/19/2003	8/11/2003
52,618	Johnson Hosiery Mills, Inc. (Comp)	Fort Payne, AL	8/19/2003	8/13/2003
52,619	Miller Casket Company (Wkrs)	Jermyn, PA	8/19/2003	8/15/0200
52,620	Corbin Russwin, Inc. (Comp)	Clarksdale, MS	08/19/2003	08/13/2003
52,621	Lala Ellen Knitting (Comp)	Fort Payne, AL	08/19/2003	08/11/2003
52,622	Descartes Systems Group (GA)	Atlanta, GA	08/19/2003	08/14/2003
52,623	Five Rivers Electronic Inovations, LLC (IU)	Greeneville, TN	08/19/2003	08/15/2003
52,624	Shell E and P Company (Comp)	Houston, TX	08/20/2003	08/11/2003
52,625	TRW Automotive (MN)	Rushford, MN	08/20/2003	08/15/2003
52,626	Paper Converting Machine Company (Comp)	Green Bay, WI	08/20/2003	08/14/2003
52,627	Flextronics Logistics (Comp)	Mt. Juliet, TN	08/20/2003	08/14/2003
52,628	V.I. Prewett and Son, Inc. (Comp)	Fort Payne, AL	08/20/2003	08/12/2003
52,629	General Binding Corporation (Comp)	Booneville, MS	08/20/2003	08/12/2003
52,630	Ramatech, LLC (Wkrs)	Belleville, MI	08/20/2003	08/06/2003
52,631	Northland A. Scott Fetzer Company (IBEW)	Waterdown, NY	08/20/2003	08/12/2003
52,632	Daimler Chrysler Child Dev. Center (UAW)	Huntsville, AL	08/20/2003	08/18/2003
52,633	Highland Supply Company (Wkrs)	Highland, IL	08/20/2003	08/18/2003
52,634	Monona Wire Corp. (Comp)	Dekalb, IL	08/21/2003	08/20/2003
52,635	North American Battery Co. (Wkrs)	San Diego, CA	08/21/2003	08/14/2003
52,636	Hilti (Wkrs)	Tulsa, OK	08/21/2003	08/20/2003
52,637	MSX International (Comp)	Auburn Hills, MI	08/21/2003	05/08/2003
52,638	Vesuvius USA (Comp)	Champaign, IL	08/21/2003	08/07/2003
52,639	Textron Fastener (Wkrs)	Madison Heights, MI	08/21/2003	08/07/2003
52,640	Bend Tec, Inc. (MN)	Duluth, MN	08/21/2003	08/20/2003
52,641	Ault, Inc. (Comp)	Minneapolis, MN	08/21/2003	08/07/2003
52,642	Cyberware (Wkrs)	Monterey, CA	08/21/2003	08/20/2003
52,643	Matsushita Avionics Systems, Corp. (Wkrs)	Coppell, TX	08/21/2003	07/26/2003
52,644	Fisher Controls (Wkrs)	McKinney, TX	08/21/2003	08/20/2003
52,645	KBK Management Associates (Wkrs)	Youngstown, OH	08/21/2003	08/18/2003
52,646	Tetonics, Inc. (Comp)	Jackson, WY	08/21/2003	08/14/2003
52,647	PACCAR, Inc. (UAW)	Madison, TN	08/21/2003	08/18/2003
52,648	Wall Repair Systems, Inc. (Comp)	LaCenter, WA	08/21/2003	08/18/2003
52,649	Tellabs (Wkrs)	Bolingbrook, IL	08/21/2003	08/19/2003
52,650	PPG Industries (Comp)	Lexington, NC	08/21/2003	08/21/2003
52,651	RR Donnelley and Sons (Wkrs)	Lancaster, PA	08/21/2003	08/06/2003
52,652	Snap-on Tools (Wkrs)	Mt. Carmel, IL	08/21/2003	08/15/2003
52,653	Progressive Processing (USWA)	Elyria, OH	08/21/2003	07/11/2003
52,654	Current Industries (Comp)	Bellingham, WA	08/21/2003	08/05/2003
52,655	Takata Petri Inc. (Comp)	Port Huron, MI	08/22/2003	08/22/2003
52,656	Agere Systems (IBEW)	Allentown, PA	08/22/2003	08/15/2003
52,657	C and C Sportswear, Inc. (Comp)	Westmoreland, IN	08/22/2003	08/21/2003
52,658	Tally Printer Corp. (Comp)	Kent, WA	08/22/2003	08/19/2003
52,659	Connex Pipe Systems (Wkrs)	Troutville, WA	08/22/2003	08/11/2003
52,660	C.J. USA Transport (Wkrs)	Wayne, MI	08/22/2003	08/08/2003
52,661	Glove's Cut and Sew, Inc. (Comp)	Albemarle, NC	08/22/2003	08/18/2003
52,662	Vantico (MN)	Minneapolis, MN	08/22/2003	08/14/2003
52,663	Stanley Services (Wkrs)	Smithfield, NC	08/22/2003	08/15/2003
52,664	Slater Steel, Inc. (USWA)	Fort Wayne, IN	08/22/2003	08/20/2003

APPENDIX—Continued

[Petitions instituted between 08/18/2003 and 08/22/2003]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
52,656	Textron (Wkrs)	Rockford, IL	08/22/2003	08/19/2003
52,666	Preceed America, Inc. (OR)	Hillsboro, OR	08/22/2003	08/15/2003
52,667	G.O. Carlson, Inc. (Comp)	Dowingtown, PA	08/22/2003	08/21/2003
52,668	Parker Hannifin Corp. (Comp)	Snowhill, NC	08/22/2003	08/18/2003
52,669	Carolina Shoe Co. (Wkrs)	Morganton, NC	08/22/2003	08/15/2003

[FR Doc. 03–23696 Filed 9–16–03; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

September 10, 2003.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 68, No. 175, at 53,400, September 10, 2003.

TIME AND DATE: 10 a.m., Thursday, September 11, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING: The Commission meeting to consider and act upon *Secretary of Labor* v. *Cactus Canyon Quarries of Texas, Inc.,* Docket Nos. CENT 2002–80–M, CENT 2001–285–M, CENT 2001–286–M, CENT 2001–379–M, CENT 2001–363–M, and CENT 2001–364–M, has been cancelled. No earlier announcement of the cancellation was possible.

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–23845 Filed 9–15–03; 12:17 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–111]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that NanoConduction Inc., of Los Gatos, CA has applied for an exclusive license to practice the invention contained in the pending patent application corresponding to NASA Case No. ARC–15042–1, entitled ''Carbon Nanotube Interconnect Technology for Microprocessors and DRAM Capacitors,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Chief Patent Counsel, NASA Ames Research Center, M/S 202A–4, Moffett Field, CA 94035–1000, 650–604–5104.

Dated: September 9, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–23629 Filed 9–16–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. *An estimate of the number of annual responses:* 600.

7. *The estimated number of annual respondents:* 250 licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42,301 hours (37,301 hours for reporting requirements and 5,000 for recordkeeping requirements).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* NRC regulations in 10 CFR part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 17, 2003. Comments received after this date will be

considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer,
Office of Information and Regulatory Affairs (3150–0008),
NEOB–10202,
Office of Management and Budget,
Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–23690 Filed 9–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Pennsylvania Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, FirstEnergy Nuclear Operating Company; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company, *et al.* (the licensee), to partially withdraw its application for proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), located in Beaver County, Pennsylvania.

The request to review related Updated Final Safety Analysis Report (UFSAR) pages submitted with the licensee's February 14, 2003, submittal was withdrawn in its March 31, 2003, submittal. The licensee's request to modify TS 3.6.2.2, ''Containment Recirculation Spray System,'' by reducing the required recirculation spray heat exchanger minimum river/service water flow rate in surveillance requirement (SR) 4.6.2.2.e.3, was withdrawn by its March 19, 2003, letter. The changes were no longer necessary as Amendment Nos. 252 and 132 for BVPS–1 and BVPS–2, respectively, relocated SR 4.6.2.2.e.3 to each unit's UFSAR. The licensee's requested changes related to conversion of the BVPS–1 and 2 containments from subatmospheric to atmospheric operating conditions was withdrawn by its September 5, 2003, submittal.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 10, 2002 (67 FR 75876). However, by letters dated March 19 and 31, and September 5, 2003, the licensee withdrew the portions of the proposed changes as stated above.

For further details with respect to this action, see the application for amendment dated June 5, 2002, as supplemented August 19 and December 2, 2002, and January 30, February 14, March 19 and 31, June 6 and 24, and September 5, 2003. The licensee's letters dated March 19 and 31, and September 5, 2003, withdrew a portion of the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of September, 2003.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23689 Filed 9–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of September 15, 22, 29, October 6, 13, 20, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

MATTERS TO BE CONSIDERED:

Week of September 15, 2003

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m.—Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss, 301–415–3264)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Thursday, September 25, 2003

9 a.m.—Meeting with Nuclear Reactor Industry on Security Force Work Hour Limitations (Public Meeting) (Contact: Chris Nolan, 301–415–8171)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of September 29, 2003—Tentative

Thursday, October 2, 2003

9:30 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

9:30 a.m.—Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Claudia Craig, 301–415–7276)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

1:30 p.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 13, 2003—Tentative

Wednesday, October 15, 2003

1:30 p.m.—Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Jimi Yerokun, 301–415–2292)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of October 20, 2003—Tentative

Thursday, October 23, 2003

10 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings

call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on September 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of 1) Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2); Application for Stay of License Transfer Order and 2) Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2'' be held on September 8, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 11, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–23837 Filed 9–15–03; 10:44 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Consolidated Decommissioning Guidance; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of the three volumes (Revision 1 of Volume 1, and final Volumes 2 and 3) of NUREG–1757, ''Consolidated NMSS Decommissioning Guidance.'' The first volume is ''Consolidated NMSS Decommissioning Guidance: Decommissioning Process for Materials Licensees'' (NUREG–1757, Vol. 1, Rev. 1), which provides guidance for planning and implementing the termination of materials licenses. The second volume, ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria'' (NUREG–1757, Vol. 2), provides guidance for compliance with the radiological criteria for termination of licenses. The third volume, ''Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness'' (NUREG–1757, Vol. 3), provides guidance for compliance with the financial assurance, recordkeeping, and timeliness criteria for decommissioning of materials facilities.

The guidance is intended for NRC staff, licensees, and the public. The guidance consolidation effort is supportive of the NRC's Strategic Plan performance goals to make NRC activities and decisions more effective, efficient, and realistic and to reduce unnecessary regulatory burden.

ADDRESSES: Volumes 1, 2, and 3 of NUREG–1757 are available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG–1757 also is available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html*, and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1757/*.

Copies of NUREG–1757 also may be purchased from one of these two sources: (1) The Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, DC 20402–0001; Internet: *http://bookstore.gpo.gov/*; telephone: 202–512–1800; fax: 202–512–2250; or (2) The National Technical Information Service, Springfield, VA 22161–0002, Internet: *www.ntis.gov*; telephone 1–800–553–6847 or, locally, 703–605–6000.

FOR FURTHER INFORMATION CONTACT: Duane W. Schmidt, Mail Stop: T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

As part of its redesign of the materials license program, NMSS has consolidated and updated numerous decommissioning guidance documents into a three-volume NUREG report, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance.'' Information on the overall decommissioning guidance consolidation and updating project can be found in the **Federal Register** notice publishing the plan for the project (66 FR 21793; May 1, 2001). NUREG–1757 provides guidance for planning and implementing license termination under the License Termination Rule (10 CFR part 20, subpart E) (LTR). This NUREG report addresses compliance with the radiological criteria for license termination of the LTR, and it incorporates the risk-informed and performance-based alternatives of the rule. This NUREG also provides guidance for compliance with the requirements for financial assurance and recordkeeping for decommissioning and timeliness in decommissioning of materials facilities.

The approaches described in NUREG–1757 help to identify the information (subject matter and level of detail) needed for a wide range of radioactive materials licensees to meet the financial assurance, recordkeeping, and timeliness requirements for decommissioning and to terminate a license. NUREG–1757 describes and makes available to the public: (1) Methods acceptable to the NRC staff in implementing specific parts of the Commission's regulations; (2) techniques and criteria used by the staff in evaluating decommissioning actions; and (3) guidance to licensees responsible for decommissioning NRC-licensed sites.

NUREG–1757 updates and builds upon the risk-informed approach used in the NMSS Decommissioning Handbook (NUREG/BR–0241, ''NMSS Handbook for Decommissioning Fuel Cycle and Materials Facilities,'' March 1997) and the ''NMSS Decommissioning Standard Review Plan,'' NUREG–1727, September 2000. The three volumes of NUREG–1757 supersede NUREG/BR–0241 and NUREG–1727 in their entirety and should be used as guidance for decommissioning.

Discussion

The following table provides a summary of: (1) The guidance provided in each volume of NUREG–1757; (2) licensees to which the guidance applies; and (3) licensee submittals to which the guidance applies.

Volume	Subject	Licensees to which the guidance applies	Licensee submittals to which the guidance applies
1	Decommissioning Process for Materials Licensees.	Fuel cycle, fuel storage, and materials licensees.	Decommissioning license amendment requests, decommissioning plans, and related compliance documents.
2	Characterization, Survey, and Determination of Radiological Criteria.	All licensees that must terminate licenses under the LTR (fuel cycle, fuel storage, materials, and reactor licensees).	Decommissioning license amendment requests, decommissioning plans, license termination plans, and related compliance documents.
3.	Financial Assurance, Recordkeeping, and Timeliness.	Fuel cycle, fuel storage, and materials licensees.	Financial assurance plans and instruments, recordkeeping plans, decommissioning license amendment requests, decommissioning plans, and related compliance documents.

On September 26, 2002 (67 FR 60706), NRC announced the availability of final NUREG–1757, Volume 1, entitled ''Consolidated NMSS Decommissioning Guidance: Decommissioning Process for Materials Licensees.'' In order to ensure consistency between the volumes of this NUREG report and to provide the most recent regulatory guidance available, the NRC staff decided that republication of Volume 1, as Revision 1, was appropriate. Revision 1 was developed concurrently with the finalization of Volumes 2 and 3 of this NUREG report. The major changes in Revision 1 include: (1) Revised guidance regarding issuance of **Federal Register** notifications during the decommissioning process; (2) removal of example **Federal Register** notices; (3) guidance on the disposition of solid materials; (4) updated guidance regarding staff actions to comply with the National Environmental Policy Act; and (5) references to the U.S. Environmental Protection Agency/NRC Memorandum of Understanding for consultation on decommissioning sites (67 FR 65375; October 24, 2002). Volume 1, Revision 1 provides guidance for developing those parts of a decommissioning plan addressing general site description and current radiological conditions; decommissioning activities, management, and quality assurance; and modifications to decommissioning programs and procedures.

On September 26, 2002 (67 FR 60707), NRC announced the availability and solicited comments on draft NUREG–1757, Volume 2, entitled ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria.'' NRC staff reviewed and considered the comments and incorporated them, where appropriate, in the final Volume 2. Appendix P of the final Volume 2 provides the public comments received and the NRC staff response to those comments. The final Volume 2 provides guidance for demonstrating compliance with the LTR. Specifically, final Volume 2 provides guidance on facility radiation surveys, especially final status surveys; dose assessments; and demonstrations that residual radioactivity levels are as low as is reasonably achievable (ALARA).

In addition, final Volume 2 provides guidance for identifying and accounting for potential dose contributions from partial site releases (see Final Rule, ''Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan;'' 68 FR 19711; April 22, 2003). Final Volume 2 provides guidance on how to account for dose contributions from previously released areas to ensure that the entire site, including the previously released areas, meets the radiological criteria of the LTR.

On January 10, 2003 (68 FR 1487), NRC announced the availability and solicited comments on draft NUREG–1757, Volume 3, entitled ''Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness.'' NRC staff reviewed and considered the comments and incorporated them, where appropriate, in the final Volume 3. Appendix B of the final Volume 3 provides the public comments received and the NRC staff response to those comments. The final Volume 3 provides guidance for demonstrating compliance with the financial assurance, recordkeeping, and timeliness requirements for decommissioning materials facilities.

While NUREG–1757 is intended for use by applicants, licensees, and NRC license reviewers, it is also available to other NRC personnel, Agreement State staff, and the public. NRC staff will use the policies and procedures discussed in NUREG–1757 to evaluate a licensee's decommissioning actions, financial assurance and recordkeeping for decommissioning, and timeliness in decommissioning.

NUREG–1757 is not a substitute for regulations, and compliance with it is not required. Methods and solutions different from those in NUREG–1757 will be acceptable, if they provide a basis for concluding that the decommissioning actions are in compliance with the Commission's regulations.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated at Rockville, MD, this 11th day of September, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–23691 Filed 9–16–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General

Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will continue its review of the new metropolitan statistical areas announced by the Office of Management and Budget in June 2003, new commuting pattern data, and other information related to establishing or modifying locality pay area boundaries begun at the Council's September 3, 2003 meeting. The Council anticipates completing its discussion of whether any changes should be recommended in locality pay area boundaries and which geographic locations should be surveyed for locality pay purposes. The Council will also review the results of pay comparisons and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay area boundaries for 2005. The Council anticipates it will complete its work for this year at this meeting and has not scheduled any additional meetings for 2003. The public may submit written materials about the locality pay program to the Council at the address shown below. The meeting is open to the public.

DATES: October 7, 2003, at 1 p.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 5303 (Pendleton Room), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *pay-performance-policy@opm.gov.*

For the President's Pay Agent:

Kay Cole James,

Director.

[FR Doc. 03–23687 Filed 9–16–03; 8:45 am]

BILLING CODE 6325–39–M

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Notice of Amendment to expand coverage of all provisions of the Department of Commerce Personnel Management Demonstration Project to include additional organizations within the Department of Commerce.

SUMMARY: Section 4703 of title 5 U.S.C. authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in policies and procedures result in improved Federal human resources management. OPM approved a demonstration project covering several operating units of the U.S. Department of Commerce (DoC). The Code of Federal Regulations (5 CFR 470.315) requires that modifications to approved demonstration project plans be approved by OPM. This notice proposes to expand the coverage of the demonstration project to include additional organizations within the Department and to increase the number of participants to the legal maximum of 5,000 participants. This notice serves to list all organizations within DoC that will be included in the Demonstration Project during its expansion phase. This notice also lists additional occupational series to be included as part of the expansion. The Department will follow the final plan as published in the **Federal Register** dated December 24, 1997, and the **Federal Register** Notice of Modification dated September 30, 1999, except for minor changes noted in Section III of this **Federal Register** Notice. These changes do not require waivers.

DATES: This notice may be implemented October 5, 2003.

FOR FURTHER INFORMATION CONTACT: Department of Commerce: Edward Liverani, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 5004, Washington, DC 20230, (202) 482–0272. Office of Personnel Management: Delmar White, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7660, Washington, DC 20415, (202) 606–1578.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the Department of Commerce (DoC) Demonstration project and published the final plan in the **Federal Register** on Wednesday, December 24, 1997, Volume 62, Number 247, Part II. The project was implemented on March 29, 1998, and modified in the **Federal Register** on Thursday, September 30, 1999, Volume 64, Number 189 (Notices) (Pages 52810–58212.)

OPM approved a request to extend the DoC demonstration project for 5 years as stated in an administrative letter from OPM, dated February 14, 2003. The key features of the project involve increased delegation of authority and accountability to line managers, simplified classification and broad banding, pay for performance, hiring and pay setting flexibilities, and modified Reduction-in-Force (RIF) procedures.

This **Federal Register** Notice covers 1,505 additional employees. Currently, the demonstration project has 2,900 employees. The remaining additional employee slots are being reserved for the near future, pending reorganization. In the event more employees are added up to the maximum limit of 5,000, another **Federal Register** Notice will be published to provide employee notification.

Office of Personnel Management.

Kay Coles James,

Director.

I. Executive Summary

The Department of Commerce (DoC) demonstration project utilizes many features similar to those implemented by the National Institute of Standards and Technology (NIST) demonstration project in 1988. The DoC project supports several key objectives: To simply the classification system for greater flexibility in classifying work and paying employees; to establish a performance management and rewards system for improving individual and organizational performance; and to improve recruitment and retention to attract highly qualified candidates. The DoC project is designed to test whether the interventions of the NIST project, which is now a permanent alternative system, could be successful in other DoC environments. The current participating organizations include the Technology Administration, the Bureau of Economic Analysis, the Institute for Telecommunication Sciences, and three units of the National Oceanic and Atmospheric Administration: Office of Oceanic and Atmospheric Research, National Marine Fisheries Service, and the National Environmental Satellite, Data, and Information Service.

II. Introduction

A. Purpose

The Department's personnel demonstration project is designed to provide managers at the lowest organizational level the authority, control and flexibility needed to recruit,

retain, develop, recognize, and motivate its workforce, while ensuring adequate accountability and oversight. Expansion of the demonstration project will allow the DoC to broaden the scope of this test to additional organizations with different missions. This should improve the Department's assessment of the effectiveness of its interventions in its efforts to compete more effectively for high quality personnel, while strengthening the manager's role in human resources management.

All provisions of the Department's personnel demonstration project, as published in the **Federal Register** Notice, dated December 24,1997, and the Notice of Modification dated September 30, 1999, will apply. This notice also serves to make changes to the plan to accommodate the expansion. These changes include the addition of specific occupational series, Departmental Personnel Management Board composition, and pre-project cost formulas for the CFO/ASA organization.

Employee notification will be made by delivery of a copy of the December 24, 1997, final plan, any subsequent modifications and this notice. Training for supervisors and employees will be accomplished by informational briefings and training sessions prior to implementation.

B. Participating Employees

Employee notification of this expansion proposal has been accomplished by providing a full set of briefings to employees and managers and providing them electronic access to all Demonstration Project policies and procedures including the two previous Demonstration Project **Federal Register** Notices. We will also provide employees with a copy of this proposed **Federal Register** Notice upon approval. Subsequent supervisor training and informational briefings for all employees will be accomplished prior to the implementation date of the expansion.

The demonstration project will be expanded to cover all nonbargaining unit employees in the following organizations at all duty locations. The following organizations are added to the final plan, Section II.D. Participating Organizations: Within the Office of the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), approximately 450 new employees from the following offices covering all their duty locations will be added at this time to the demonstration project as part of the expansion:

Office of Security
Office of Management and Organization
Office of Financial Management
Office of Human Resources Management
Office of Administrative Services
Office of Acquisition Management

The DoC demonstration project will also be expanded to include 1,055 additional employees in the following organizations and locations within the National Oceanic and Atmospheric Administration (NOAA):

Within the National Oceanic and Atmospheric Administration:

Program Planning and Integration Office, Silver Spring, MD

Within the Office of Oceanic and Atmospheric Research:

Geophysical Fluid Dynamics Research Laboratory, Princeton, N.J.

Within the National Marine Fisheries Service:

Pacific Islands Regional Office, Honolulu, HI.
Pacific Islands Fisheries Science Center, Honolulu, HI.

Nonbargaining unit employees in the following organizations:

Northeast Fisheries Science Center, Woods Hole, MA, and Laboratories in Narragansett, RI, Milford, CT, Sandy Hook, NJ, and Washington, DC.
Southeast Regional Office, St. Petersburg, FL.
Southeast Fisheries Science Center, Miami, FL, and Laboratories at Panama City, FL, Pascagoula and Bay St. Louis, MS, and Galveston, TX.
Southwest Fisheries Science Center, La Jolla, CA, and Laboratories in Santa Cruz and Pacific Grove, CA.
Northwest Fisheries Science Center, Seattle, WA, and Laboratories in Newport and Hammond, OR, and Manchester, Pasco, and Mukilteo, WA.
Alaska Fisheries Science Center, Seattle, WA, and Auke Bay Laboratory in Juneau, AK.

Within the National Environmental Satellite, Data and Information Service:

Nonbargaining unit employees in the following organization:

Wallops Island Command and Data Acquisition Station, Wallops Island, VA.

C. Changes to the Plan

(1) Section II. E: Participating Employees

The following series are added to Table 2.

Scientific and Engineering (ZP) Career Path	
0410	Zoology Series.
0413	Physiology Series.
0440	Genetics Series.
0690	Industrial Hygiene Series.
0808	Architecture Series.
0819	Environmental Engineering Series.
0871	Naval Architecture Series.
0896	Industrial Engineering Series.
1370	Cartography Series.
2210	Information Technology Management Series.
2299	Information Technology Student Trainee Series.

Scientific and Engineering Technician (ZT) Career Path	
0350	Equipment Operator Series.
0817	Surveying Technician Series.
1371	Cartographic Technician Series.
1374	Geodetic Technician Series.
1862	Consumer Safety Inspection Series.

Administrative (ZA) Career Path	
0080	Security Administration Series.
0083	Police Series.
0085	Security Guard Series.
0018	Safety and Occupational Health Management Series.
0150	Georgraphy Series.
0170	History Series.
0201	Human Resources Management Series.
0399	Administration and Office Support Student Trainee Series.
0505	Financial Management Series.
0599	Financial Management Student Trainee.
0828	Construction Analyst Series.
0963	Legal Instruments Examining Series.
1008	Interior Design Series.
1015	Museum Curator Series.
1016	Museum Specialist and Technician Series.
1020	Illustrating Series.
1060	Photography Series.
1102	Contracting Series.
1104	Property Disposal Series.
1152	Production Control Series.
1170	Realty Series.
1176	Building Management Series.
1361	Navigational Information Series.
1640	Facility Operations Services Series.
1701	General Education and Training Series.
2001	General Supply Series.
2010	Inventory Management Series.
2030	Distribution Facilities and Storage Management Series.
2101	Transportation Specialist Series.
2130	Traffic Management Series.

Support (ZS) Career Path	
0086	Security Clerical and Assistance Series.
0203	Human Resources Assistance Series.
0351	Printing Clerical Series.
0356	Data Transcriber Series.
0361	Equal Opportunity Assistance Series.
0503	Financial Clerical and Assistance Series.
0544	Civilian Pay Series.
1106	Procurement Clerical and Technician Series.
1421	Archives Technician Series.
1802	Compliance Inspection and Support Series.

(2) Section VII: Project Management

The Departmental Personnel Management Board will expand to include additional board members representing the new major operating units included in the project. It is the intent of the DoC to ensure the composition of the board reflects the diversity of employee groups to ensure the objectives of the demonstration project are achieved in an equitable and consistent manner.

(3) Section V: B. Base Cost Assessment

The current plan identifies Fiscal Years 1994, 1995, and 1996 as the basis of analysis of pre-project costs to determine whether project costs are being maintained at acceptable levels. Since CFO/ASA has never participated in the demonstration project, costs will be computed as annual averages over the past three pre-project fiscal years immediately preceding implementation, within CFO/ASA offices. NOAA will continue using FY 1994–96 as its cost basis, since it was part of the demonstration project during these years.

[FR Doc. 03–23688 Filed 9–16–03; 8:45 am]

BILLING CODE 6325–43–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–4(b) and (c), SEC File No. 270–264, OMB Control No. 3235–0341.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–4(b) and (c): Notices Regarding Exempt Transfer Agent Status

Rule 17Ad–4(b) and (c) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority (''ARA'') apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System (''BGFRS'') or the Federal Deposit Insurance Corporation (''FDIC''), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency (''OCC'') do not require transfer agent to file notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance to the transfer agent community is $1,050.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director, Office of Information Technology/CIO, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: September 11, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23740 Filed 9–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 53618, September 11, 2003.

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Room 6600, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, September 17, 2003.

CHANGE IN THE MEETING: Rescheduled Item.

AGENDA FOR THE WEEK OF: September 22, 2003.

The following item previously scheduled for the Open Meeting on September 17, 2003 has been rescheduled and will be considered at the Open Meeting of Wednesday, September 24, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room: Proposal for public comment of new rules 12d1–1, 12d1–2, and 12d1–3 under the Investment Company Act of 1940.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission

will hold the following meetings during the week of September 22, 2003: Closed Meetings will be held on Tuesday, September 23, 2003 at 2 p.m., Wednesday, September 24, 2003 at 11 a.m., and Thursday, September 25, 2003 at 10 a.m., and an Open Meeting will be held on Wednesday, September 24, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, September 23, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation.

The subject matter of the Open Meeting scheduled for Wednesday, September 24, 2003 will be:

Item 1: The Commission will consider whether to propose for public comment new rules 12d1–1, 12d1–2, and 12d1–3 under the Investment Company Act of 1940. The recommended rules would broaden the ability of an investment company (''fund'') to acquire shares of another fund consistent with the protection of investors and the purposes of the Act. The Commission also will consider a recommendation to amend forms N–1A, N–2, N–3, N–4, and N–6, which are used by investment companies to register under the Investment Company Act and to offer their shares under the Securities Act of 1933. The recommended amendments would improve the transparency of the expenses of funds that invest in other funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the acquiring funds.

For further information, please contact Penelope Saltzman at (202) 942–0690.

Item 2: The Commission will consider whether to adopt amendments to Rules 134, 156, and 482 under the Securities Act of 1933; Rule 34b–1 under the Investment Company Act of 1940; and four investment company registrations forms (Forms N–1A, N–3, N–4, and N–6). The amendments would require enhanced disclosure in mutual fund advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The amendments also would implement a provision of the National Securities Markets Improvement Act of 1996 by eliminating the requirement that Rule 482 advertisements for an investment company contain only information the substance of which is included in the investment company's statutory prospectus.

For further information, please contact Christopher P. Kaiser at (202) 942–0721.

Item 3: The Commission will hear oral argument on an appeal by the Rockies Fund, Inc. (the ''Fund''), a closed end investment company, Stephen G. Calandrella, president and director of the Fund, Charles M. Powell and Clifford C. Thygesen, independent directors of the Fund, and John C. Power, from the decision of an administrative law judge.

The law judge found that:

a. Calandrella and Power violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b–5 thereunder by manipulating the price of securities;

b. The Fund, Calandrella, Powell, and Thygesen violated Exchange Act Section 10(b) and Rule 10b–5 by making untrue statements of material facts in the Fund's annual and quarterly reports by misclassifying restricted shares and overvaluing such shares, and that the Fund and Calandrella violated those provisions by overstating the number of shares in the Fund's portfolio;

c. The Fund violated, and Calandrella, Powell, and Thygesen, aided and abetted the Fund's violations, of Section 13(a) of the Exchange Act and Rules 12b–20, 13a–1, and 13a–13 by filing reports that made untrue statements of material facts and that did not comply with GAAP and Regulation S–X.

d. Calandrella violated Section 57(k)(1) of the Investment Company Act of 1940 by causing the Fund to purchase stock to settle a legal claim threatened against Calandrella personally, and Calandrella violated Exchange Act Section 10(b) and Rule 10b–5 by failing to disclose this settlement to the independent board members of the Fund.

The law judge ordered all of the respondents to cease and desist from committing or causing any further violations of the provisions that they were found to have violated. The law judge further ordered Calandrella to pay a civil money penalty of $500,000 and Thygesen and Powell each to pay a civil money penalty of $160,000. The law judge permanently barred Calandrella and, for a period of three years, barred Thygesen and Powell, from associating with or acting as an affiliated person of an investment company.

Among the issues likely to be argued are:

a. Whether the evidence supports the allegations; and

b. Whether and to what extent sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter of the Closed Meeting scheduled for Wednesday, September 24, 2003 will be: Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, September 25, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudication matter; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 12, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–23797 Filed 9–12–03; 4:54 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48484; File No. SR–Amex–2003–72]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

September 11, 2003.

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 July 29, 2003, the American Stock Exchange LLC

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

(''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Section 107A of the Amex Company Guide (''Company Guide''), trust certificates linked to a basket of investment grade fixed income debt instruments.

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide, asset-backed securities (the ''ABS Securities'') representing ownership interests in the ''Long-Term Certificate Trust 2003–(#)'' (the ''Trust''),[4] a special purpose entity to be formed by Structured Obligations Corporation (''SOC''),[5] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to five investment-grade fixed-income securities (the ''Underlying Corporate Bonds'') and United States Department of Treasury STRIPS or securities issued by the United States Department of the Treasury (the ''Treasury Securities''). In the aggregate, the component securities of the basket or portfolio will be referred to as the ''Underlying Securities.''

The ABS Securities will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (an ''NRSRO''). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities, with the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities. However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of the Underlying Corporate Bonds, rather than the Trust to meet the requirements in Section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds will meet or exceed the requirements of Section 107A of the Company Guide. In addition, the Exchange for purposes of including Treasury Securities, will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provide for the payment of interest on a semi-annual, quarterly or monthly basis, but the ABS Securities will provide for semi-annual or quarterly distributions of interest. The Treasury Securities will not make periodic payments of interest.[8] The Exchange represents that, to alleviate any cash flow timing issue, the Trust may enter into an interest distribution agreement (the ''Interest Distribution Agreement'') that will be described in any prospectus supplement related to the ABS Securities (the ''Prospectus Supplement'').[9] Whether an Interest Distribution Agreement is required will depend upon the timing of the interest coupon payments of the Underlying Securities.

Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities (*i.e.*, the Underlying Corporate Bonds and Treasury Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market. In the case of Treasury Securities, the

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] The trust name will be completed with sequential numbering. See e-mail from Jeffrey P. Burns, Assistant General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated September 5, 2003.

[5] Structured Obligations Corporation is a wholly-owned special purpose entity of J.P. Morgan Securities Holdings Inc. and the registrant under the Form S–3 Registration Statement (No. 333–70730) under which the securities will be issued.

[6] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A stripped fixed income security, such as certain Treasury Securities, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[9] Pursuant to any Interest Distribution Agreement that may be entered into by the Trust, shortfalls in the amounts available to pay monthly or quarterly interest to holders of the ABS Securities due to the Underlying Securities paying interest semi-annually will be made to the Trust by JP Morgan Chase Bank or one of its affiliates and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

Trust will either purchase the securities directly from primary dealers or in the secondary market, which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made monthly or quarterly. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Securities.[10] The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond, however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are substantially similar to several Select Term Notes currently listed and traded on the Exchange,[11] with the only difference being the number and identity of the Underlying Securities in the basket of investment grade fixed-income securities. In addition, the instant proposal may or may not require the use of an Interest Distribution Agreement to ''smooth'' out any shortfall in interest payable to investors not yet received by the Trust from the Underlying Securities. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Amex Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange (''NYSE'') or on the Nasdaq National Market (''Nasdaq'')); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security no lower than a Standard & Poor's Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P ''B'' rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS Securities will be based on (1) the respective maturities of the Underlying Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities and (3) any early redemption or liquidation of the Underlying Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities. In addition, The Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com*. Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers' Trade Reporting and Compliance Engine (''TRACE'') will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[12] For a fee, investors can have access to intra-day bellwether quotes.[13]

Price and transaction information for Treasury Securities may also be obtained at *http://publicdebt.treas.gov* and *http://www.govpx.com*, respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[14] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The ABS Securities will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[15] Second, the ABS Securities will be subject to the debt margin rules of the Exchange.[16] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees

[10] The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. *See* Prospectus Supplement for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[11] *See* Securities Exchange Act Release Nos. 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. Amex–2003–25); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (File No. Amex–2003–37). *See also* Securities Exchange Act Release Nos. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. Amex–2002–70); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. Amex–2002–92).

[12] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

[13] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/*.

[14] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[15] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[16] *See* Amex Rule 462.

thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [17] in general and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–72 and should be submitted by October 8, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[19] The Commission finds that this proposal is similar to several approved certificates linked to a portfolio of investment grade debt currently listed and traded on the Amex.[20] Accordingly, the Commission finds that the listing and trading of the ABS Securities is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of the Treasury Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. In addition, each of the Underlying Corporate Bonds may provide for payment of interest on a semi-annual, quarterly or monthly basis, while the ABS securities themselves will provide for semi-annual or quarterly distribution of interest, pursuant to any Interest Distribution Agreement. The Treasury Securities will not make periodic payments of interest.[22] In addition, the ABS securities will mature on the latest maturity date of the Underlying Securities.[23] However, due to the pass-through and passive nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's ''Other Securities'' listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[24] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $1000 denominations with its existing debt floor trading rules applying to the

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] *See* Securities Exchange Act Release Nos. 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (File No. SR–Amex–2003–69); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. SR–Amex–2003–25) (approving the listing and trading of trust certificates linked to a basket of investment grade fixed income securities); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28).

[21] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See supra* note 8.

[23] The Commission notes, however, that the Exchange has represented that the Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. *See* Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[24] *See* Company Guide Section 107A.

trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[25]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities to meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such Bloomberg, L.P., or though Web sites such as *http://www.investinbonds.com* (for Underlying Corporate Bonds) and *http://publicdebt.treas.gov* and *http://www.govpx.com* (for Treasury Securities).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[26] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act [27] to approve the proposal, on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Amex–2003–72) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

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[25] The ABS Securities will be registered under Section 12 of the Act.

[26] *See supra* note 20.

[27] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[28] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[29] 17 CFR200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48465; File No. SR–EMCC–2003–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to EMCC's Capital Requirements for Members

September 9, 2003.

I. Introduction

On April 8, 2003, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–EMCC–2003–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''). [1] Notice of the proposal was published in the **Federal Register** on July 29, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

EMCC's Rule 2 (''Members''), Section 6 (''Admission Criteria for Members''), provides that if an applicant does not meet the minimum capital requirements set forth in Section 6, EMCC's Board of Directors may include for such purposes the capital of an affiliate of the applicant if the affiliate delivers to EMCC a satisfactory guaranty. The purpose of the proposed rule change is to permit any existing member of EMCC that no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safekeeping of securities and funds which are in its possession or control or for which it is responsible.[3] The proposed rule change eliminates an inconsistency in EMCC's rules that prevented an existing member who did not use the guaranty of an affiliate as an applicant from using such a guaranty, but an existing member who did use the guaranty of an affiliate as an applicant could continue to include the affiliate's capital for purposes of satisfying its capital requirement as a continuing EMCC member. Allowing an existing member that was admitted to EMCC membership without using an affiliate's capital to include the capital of an affiliate to satisfy its EMCC capital requirement with an appropriate guaranty, similarly as can other members, should not adversely affect EMCC's ability to safeguard securities and funds. As such the Commission finds the proposed rule change is consistent with EMCC's requirements under Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48209 (July 22, 2003), 68 FR 44554.

[3] 15 U.S.C. 78q–1(b)(3)(F).

requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48472; File No. SR–PHLX–2002–86]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 4 and 5 Thereto Relating to the Automatic Execution of Booked Customer Limit Orders

September 10, 2003.

On December 20, 2002, the Philadelphia Stock Exchange (''PHLX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to automatic execution of booked customer limited orders. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as modified by Amendments No. 1, 2, and 3, was published in the **Federal Register** on April 16, 2003.[6] The Commission received one comment letter with respect to the proposal.[7] The Exchange submitted a letter in response to ISE Letter on May 20, 2003.[8] On July 9, 2003 and August 15, 2003, the Exchange submitted Amendments No. 4[9] and 5[10] to the proposed rule change, respectively. This order approves the proposed rule change and Amendments No. 1, 2, and 3, accelerates approval of Amendments No. 4 and 5, and solicits comments from interested persons on Amendments No. 4 and 5.

I. Description of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1080, Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X''),[11] to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer limit orders[12] against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX Rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO–X may be a booked customer limit order.

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.[13] The proposal represents the first phase (''Phase I'') of the Exchange's ''Book Match'' system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book (''booked limit orders'').[14]

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO–X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2003 (''Amendment No. 1''). In Amendment No. 1, the PHLX replaces in its entirety the original proposed rule change.

[4] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 (''Amendment No. 2''). In Amendment No. 2, the PHLX replaces in its entirety Amendment No. 1.

[5] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated April 9, 2003 (''Amendment No. 3''). In Amendment No. 3, the PHLX incorporates changes to the text of the PHLX Rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

[6] *See* Securities Exchange Act Release No. 47657 (April 10, 2003), 68 FR 18717.

[7] *See* Letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. (''ISE'') to Jonathan G. Katz, Secretary, Commission, dated May 7, 2003 (''ISE Letter'').

[8] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Jonathan G. Katz, Secretary, Commission, dated May 20, 2003 (''PHLX Letter'').

[9] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated July 8, 2003 (''Amendment No. 4''). In Amendment No. 4, the Exchange propose to adopt new rule texts to clarify the scope of the application of the exposure requirement, and provides clarifying language to the proposal relating to the definition of the term ''off-floor broker-dealers'' and the internalization of orders delivered to the Exchange.

[10] *See* Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated August 15, 2003 (''Amendment No. 5''). In Amendment No. 5, the Exchange proposes deleting the 10-second timer provision and implementing Book Match, on an issue-by-issue basis, no later than October 1, 2003.

[11] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* PHLX Rule 1080.

[12] In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the ''pilot''). *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–PHLX–2001–40). In the pilot, the Exchange defined ''off-floor broker-dealer'' as (a) a broker-dealer that delivers orders from ''upstairs'' for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. *See* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–PHLX–2002–50).

[13] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* PHLX Rule 1080, Commentary .02.

[14] The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader (''ROT'') limit orders entered onto the limit order book through an electronic interface system known as ''ROT Access'' under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3–10282 (the ''Order''). *See* also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–PHLX–2002–04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

price consists of a booked limit order. In that situation, inbound orders that would otherwise be eligible for automatic execution are matched manually by the specialist.[15]

The Exchange proposes, pursuant to proposed PHLX Rule 1080(g)(ii), that when the Exchange's disseminated price is equal to the National Best Bid or Offer (''NBBO''), and all or part of the Exchange's disseminated size at the NBBO disseminated price includes a customer limit order on the book, eligible inbound customer and off-floor broker-dealer limit orders would be automatically executed against booked customer limit orders at the NBBO, up to the size of the booked customer limit orders at the NBBO.[16] If the inbound customer or off-floor broker-dealer limit order is for a greater size than the Exchange's disseminated size, the remaining portion of the order would be executed manually or placed on the limit order book by the specialist.[17] The Exchange proposes to deploy Book Match, on an issue-by-issue basis, no later than October 1, 2003.[18]

a. Order Entry Firm Orders Delivered by Such Order Entry Firm, an Affiliated Firm, or a Solicited Party

The Exchange believes that the Book Match proposal could create an opportunity for off-floor member organizations to internalize orders (*i.e.*, submit a proprietary order as contra-side to their customers' limit orders on the book) without providing the specialist and trading crowd with a sufficient time period to determine to execute the customer limit order.

To address this potential issue, the Exchange originally proposed requiring member organizations that seek to submit a related proprietary contra-side order (*i.e.*, their own order or that of an affiliate) via AUTOM in conjunction with a customer limit order they deliver to the limit order book, to designate such orders with a special indicator (''K'' for the customer limit order, and ''L'' for the proprietary order). Such orders would not be eligible for AUTO–X or Book Match, and the customer limit order labeled ''K'' must be exposed to the crowd for a period of 30 seconds before it would be eligible to be executed against the proprietary order labeled ''L.'' The proposal would provide that the customer limit order on the book may be executed by the specialist or crowd prior to the expiration of 30 seconds.

In Amendment No. 4, the Exchange amended this aspect of its proposed rule change to broaden the application of the above exposure requirement to solicited party orders. As amended, the Exchange would require that member organizations that seek to submit a customer limit order and a related proprietary contra-side order (*i.e.*, their own order, an affiliate order, or a solicited party order as defined in PHLX Rule 1064(c)(ii)) delivered via AUTOM, to designate such orders with a special indicator (''K'' for the customer limit order, and ''L'' for the proprietary order).[19] Such orders would not be eligible for AUTO–X or Book Match, and the customer limit order labeled ''K'' must be exposed to the crowd for a period of 30- seconds before it would be eligible to be executed, in whole or in part, against proprietary orders with labeled ''L'' indicator. The proposal would also provide that the customer limit order on the book may be executed by the specialist or crowd at anytime.

The Exchange also amended the proposed rule change, pursuant to Amendment No. 4, to prohibit an Exchange member or member organization from being a party to any arrangement designed to circumvent the crossing procedures discussed above, by providing an opportunity for a customer, member, member organization, or non-member broker-dealer, to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or member organization.[20]

b. Linkage Orders

The Exchange further believes that the Book Match function will enable the Exchange to promptly execute orders delivered to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Plan'')[21] and PHLX Rules 1083–1087 adopted to implement the Plan,[22] by matching eligible inbound linkage orders in a timely fashion. The Exchange represents that its systems are capable of recognizing inbound Linkage Principal Acting as Agent Orders (''P/A Orders'')[23] and Principal Orders (''P Orders''),[24] and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size[25] in the case of P/A Orders, and at the Firm Principal Quote Size[26] in the case of P Orders.

c. Yielding Requirements

The Exchange also proposed to match both inbound marketable customer and off-floor broker-dealer limit orders with customer limit orders on the book at the NBBO. In the case of inbound non-marketable limit orders, the Exchange's rules concerning the establishment of a bid or offer, and yielding requirements in parity situations would apply. Currently, PHLX Rule 1080, Commentary .05(ii) provides that off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, subject to the yield provisions set forth in PHLX Rule 1014, which require ''controlled accounts''[27] to yield priority to customer orders when bidding or

[15] PHLX Rule 1080(c)(iv) sets forth the various situations in which orders otherwise eligible for automatic execution via AUTO–X are handled manually by the specialist, including this situation, where there is a booked limit order. *See* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–PHLX–2001–24).

[16] The disseminated price consisting of a booked limit order at which the eligible inbound order would be executed must be the NBBO. For instance, if the PHLX bid is the National Best Bid, but the PHLX offer is not the National Best Offer, an inbound buy order would not be subject to Book Match, but would instead be handled manually.

[17] In Amendment No. 5, the Exchange proposes to delete the 10-second timer initially proposed. *See* Amendment No. 5, *supra* note 10.

[18] *See* Amendment No. 5, *supra* note 10.

[19] *See* Amendment No. 4, *supra* note 9.

[20] *Id.*

[21] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of PHLX Joining the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[22] *See* Securities Exchange Act Release No. 47296 (January 31, 2003), 68 FR 6528 (February 7, 2003) (SR–PHLX–2002–67).

[23] PHLX Rule 1083(j)(i) defines a ''P/A Order'' as an order for the principal account of a specialist (or equivalent entity on another exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

[24] PHLX Rule 1083(j)(ii) defines a ''P Order'' as an order for the principal account of an eligible market maker and is not a P/A Order.

[25] ''Firm Customer Quote Size'' with respect to a P/A Order means the lesser of (a) the number of option contracts that the exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market; or (b) the number of option contracts that the exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market. This number shall be at least 10. *See* PHLX Rule 1083(g).

[26] ''Firm Principal Quote Size'' means the number of options contracts that an exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an eligible option class. This number shall be at least 10. *See* PHLX Rule 1083(h).

[27] PHLX Rule 1014(g)(i)(A) provides that an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer (specialist accounts of PHLX option specialists, however, are not subject to yielding requirements placed upon controlled accounts by this rule). Customer accounts are all other accounts.

offering at the same price for the same series.

Orders of controlled accounts must yield priority to customer orders.[28] Off-floor broker-dealer accounts, a subset of ''controlled accounts,'' must also yield priority to customer orders at the same price. Therefore, if an off-floor broker-dealer limit order is placed on the limit order book, followed by a customer limit order placed on the limit order book at the same price, the off-floor broker-dealer limit order must yield priority to the customer limit order, even though the customer limit order was placed on the limit order book after the off-floor broker-dealer order.[29]

II. Comment Summary

The Commission received one comment letter on the proposed rule change that generally opposed the Exchange's proposal relating to its crossing procedures pursuant to Rule 1080(ii).[30]

Specifically, ISE stated that the Exchange's proposed term ''off-floor broker-dealer,'' which included two alternative definitions of the same term, appeared to be redundant. The term ''off-floor broker-dealer'' would involve either: (1) A broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealers; or (2) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. ISE argued that the Exchange does not need the second clause above, since orders of market makers from other exchanges are also proprietary orders of a broker-dealer.

Furthermore, ISE believed that the exposure requirement does not appear sufficiently broad because the Exchange stated that the exposure requirement would apply to customer limit order submitted ''in conjunction'' with a proprietary contra-side order via AUTOM. ISE stated that if this were the case, then the exposure requirement would be too narrow, as it would allow broker-dealers to enter two orders separately, but within a few seconds of each other, to avoid the 30-second exposure requirement altogether.

ISE also believed that the Exchange should include an exposure requirement (*i.e.,* 30 seconds) for solicited transactions.

In addition, ISE argued that the Exchange should adopt provisions: (1) To prohibit Exchange members from entering into arrangements with other broker-dealers to do crossing transactions without applying the same exposure requirement; and (2) to prohibit Exchange members from violating the exposure requirement for solicited orders.

On July 8, 2003, the Exchange submitted Amendment No. 4 in response to ISE's comments. In particular, the Exchange amended the proposed rule text relating to the term ''off-floor broker-dealer,'' to clarify that off-broker-dealer orders include orders of market makers from other exchanges.[31] The Exchange also amended the proposed rule text to clarify that the exposure requirement would also apply to solicited transactions.[32] Furthermore, the Exchange proposed to add new rule text, pursuant to PHLX Rules 1080(b)(ii)(B), to prevent any Exchange member or member organization from being a party to any arrangement to circumvent the proposed crossing procedures, pursuant to PHLX Rule 1080(b)(ii)(A), by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute against an agency order immediately, whether delivered via AUTOM or represented in the trading crowd by a member or a member organization.[33]

III. Discussion

The Commission has reviewed carefully the proposed rule change, the comment letter, the Exchange's response to the comments, and all the amendments and finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5)[34] of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission believes that the proposed rule change, as amended by Amendments No. 4 and 5, is consistent with Section 6(b)(5) of the Act,[36] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission anticipates that the Book Match should help to provide faster execution of certain eligible inbound customer and off-floor broker-dealer options orders, while reducing the burden on the Exchange's specialists to manually execute these orders. The Commission believes that the Book Match proposal should benefit customers using the AUTO-X system, as well as customers whose orders are residing in the Exchange's customer limit order book that are at the NBBO.

Moreover, the PHLX represents that the Book Match function would operate consistent with the Plan and PHLX Rules 1083 through 1087 adopted to implement the Plan, and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size in the case of P/A Orders (*i.e.,* the inbound customer orders), and at the Firm Principal Quote Size (*i.e.,* the inbound off-floor broker-dealer orders) in the case of P Orders.

The SEC notes that the Exchange has specifically clarified that off-floor broker-dealer orders are subject to the priority-yielding provision of PHLX Rule 1014(g)(i). The Commission believes that this requirement of the proposal should ensure that retail customers are not adversely affected and should promote investor protection by retaining customer orders' priority on the book.

Moreover, the SEC finds that the proposed rules relating to internalization of orders delivered via AUTOM should address the commenter's concern that the proposed exposure requirement should be applied to any pre-arranged proprietary or solicited crosses.[37] Specifically, by requiring an Exchange member or member organization to expose to the trading crowd for at least 30 seconds an agency order before executing any part of the order as principal, or before such order may be executed by any order solicited by the originating broker-dealer, these rules should potentially ensure that the crossing and facilitation

[28] The Commission recently approved PHLX's proposal to require orders of controlled accounts to yield priority to customer orders in all circumstances. *See* Securities Exchange Act Release No. 47739 (April 25, 2003), 68 FR 23354 (May 1, 2003). Previously, PHLX ROTs closing in-person were not required to yield priority to orders of customer accounts. *Id.*

[29] At the request of the Exchange, the discussion under this section has been modified slightly to reflect recent changes to the PHLX rules. Telephone conversation between Richard S. Rudolph, Director and Counsel, PHLX and Hong-Anh Tran, Special Counsel, Division, Commission, on September 5, 2003.

[30] *See* ISE Letter, *supra* note 7.

[31] *See* Amendment No. 4, *supra* note 9.

[32] *Id.*

[33] *Id.*

[34] 15 U.S.C. 78f(b)(5).

[35] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] The Commission previously approved similar provisions as part of ISE's rules and CBOEDirect's rules. *See* ISE Rules 717(d) and (e), Supplemental Materials .01 and .02; and CBOE Rule 43.12C.

procedures described above are not circumvented.

The Commission believes that the prohibition on such arrangements is important to prevent members or member organizations and a third party from having their orders executed against each other, without exposing these orders to other trading interest. The SEC expects the Exchange to develop a surveillance procedure to identify patterns in which a firm places an order on the book and then shortly thereafter submits a contra side order executing against the prior related order. The SEC expects PHLX surveillance to address the SEC's concern that firms may potentially game the internalization aspect of Book Match by mismarking orders.

The Commission finds good cause for approving Amendments No. 4 and 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 4 should clarify the scope of the application of the exposure requirement, and the proposed language relating to the internalization of orders delivered via AUTOM and responds to the comment letter. Moreover, Amendment No. 5 is similar to proposed rule changes that were previously approved by the Commission.[38] Thus, Amendment No. 5 concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act,[39] and thus raises no novel issues.[40] The SEC notes that Book Match will be deployed, on an issue-by-issue basis, no later than October 1, 2003. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,[41] to approve Amendments No. 4 and 5 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning Amendments No. 4 and 5, including whether Amendments No. 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendments No. 4 and 5 that are filed with the Commission, and all written communications relating to Amendments No. 4 and 5 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–2002–86 and should be submitted by October 8, 2003.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–PHLX–2002–86), as amended by Amendments No. 4 and 5 be, and hereby is, approved, and that Amendments No. 4 and 5 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23739 Filed 9–16–03; 8:45 am]

BILLING CODE 8010–01–P

[38] *See* Securities Exchange Release Nos. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (order approving the Chicago Board Options Exchange's (''CBOE'') proposal relating to automatic execution of certain orders on the CBOE's electronic limit order book); and 42652 (April 7, 2000), 65 FR 20235 (April 14, 2000) (order approving the American Stock Exchange's (''AMEX'') proposal relating to Auto-Match).

[39] 15 U.S.C. 78s(b).

[40] *See supra* note 10.

[41] 15 U.S.C. 78s(b).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0609]

Wasserstein SBIC Ventures II, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Wasserstein SBIC Ventures II, LP, 1301 Avenue of the Americas, 44th Floor, New York, New York 10019, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2001)). Wasserstein SBIC Ventures II, LP proposes to provide equity financing to Nephros, Inc., 2960 Broadway, New York, New York 10032. The financing is contemplated for general corporate purposes including product development and marketing.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because WPPN, LP, an Associate of Wasserstein SBIC Ventures II, LP, currently owns greater than 10 percent of Nephros, Inc. and therefore Nephros, Inc. is considered an Associate of Wasserstein SBIC Ventures II, LP, as defined in section 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 11, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–23633 Filed 9–16–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program; (SSA/Centers for Medicare and Medicaid Services (CMS) Match Number 1076)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of renewal of an existing computer matching program which is scheduled to expire on September 24, 2003.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with CMS.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 10, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Centers for Medicare and Medicaid Services (CMS)

A. Participating Agencies

SSA and CMS.

B. Purpose of the Matching Program

The purpose of this matching program is to identify Supplemental Security Income (SSI) recipients and Special Veterans' Benefits (SVB) beneficiaries who have been admitted to certain public institutions. The program will thereby facilitate benefit reductions required under certain provisions of title XVI of the Social Security Act (Act) for individuals in such institutions and benefit terminations required under certain provisions of title VIII of the Act for individuals no longer residing outside the United States.

C. Authority for Conducting the Matching Program

Sections 1611(e)(1)(A) and (B), 1631(f), 801 and 806(a) and (b) of the Social Security Act (42 U.S.C. 1382(e)(1)(A) and (B), 1383(f), 1001 and 1006(a) and (b)); 20 CFR 416.211. Routine Use Number 19, effective 1/6/95, allows disclosure to Federal, State or local agencies for administering cash or noncash income maintenance or health maintenance programs.

D. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information regarding SSI and SVB applicants, recipients and beneficiaries as provided by SSA to CMS, CMS will provide SSA with electronic files containing skilled nursing facility admission and billing data from its Long-Term Care Minimum Data Set, LTC/MDS 09–70–1516, system of records. SSA will then match the CMS data with SSI and SVB payment information maintained in the Supplemental Security Income Record, SSA/OEEAS 60–0103, system of records.

E. Inclusive Dates of the Matching Program

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03–23630 Filed 9–16–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW—ALS]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 17, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to 2900–New—ALS.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''2900-New–ALS.''

SUPPLEMENTARY INFORMATION:

Titles:

a. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Initial Baseline Screening Form, VA Form, 10–21047.

b. VA Research Consent Form, VA Form 10–1086.

c. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Registry Phone Interviews, VA Form 10–21047a.

Type of Review: New collection.

Abstract: Amyotrophic Lateral Sclerosis (ALS) is a disease of high priority to the Department of Veterans Affairs because of ongoing concerns about the health of veterans who served in the Gulf War. The creation of the registry will have significance both for VA and for the larger U.S. society in understanding the natural history of ALS. It will provide VA with crucial

epidemiological data on the current population of veterans with ALS, as well as the ongoing identification of new cases. The data will help VA to understand how veterans are affected by ALS, assist with early identification of new ALS clusters, provide a mechanism for informing veterans with ALS of new clinical drug trials and other studies, and examine the causes (*e.g.*, genetic and environmental) and course of this disease.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 6, 2003 at page 24050.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Initial Baseline Screening Form, VA Form, 10–21047—365 hours.

b. VA Research Consent Form, VA Form 10–1086—207 hours.

c. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Registry Phone Interviews, VA Form 10–21047a—1,237 hours.

Estimated Average Burden Per Respondent:

a. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Initial Baseline Screening Form, VA Form, 10–21047—30 minutes.

b. VA Research Consent Form, VA Form 10–1086—20 minutes.

c. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Registry Phone Interviews, VA Form 21047a—30 minutes.

Frequency of Response: Semi-annually.

Estimated Number of Respondents:

a. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Initial Baseline Screening Form, VA Form, 10–21047—729.

b. VA Research Consent Form, VA Form 10–1086—620.

c. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Registry Phone Interviews, VA Form 10–21047a—1,431.

Estimated Number of Responses:

a. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Initial Baseline Screening Form, VA Form, 10–21047—729.

b. VA Research Consent Form, VA Form 10–1086—620.

c. National Registry of Veterans with Amyotrophic Lateral Sclerosis (ALS), ALS Registry Phone Interviews, 10–21047a—2,474.

Dated: September 9, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–23625 Filed 9–16–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 17, 2003

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 61, 91, et al.

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 61, 91, 119, 125, 135, and 142

[Docket No. FAA–2001–10047; Amdt. Nos. 21–84, 61–109, 91–274, 119–7, 125–44, 135–82, 142–5]

RIN 2120–AH06

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is updating and revising the regulations governing operations of aircraft in fractional ownership programs. The FAA has determined that the current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. This final rule defines fractional ownership programs and their various participants, allocates responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensures that fractional ownership program aircraft operations will maintain a high level of safety. These regulations provide a level of safety for fractional ownership programs equivalent to certain regulations that apply to on-demand operators. The rule also revises some requirements that apply to on-demand operators that meet certain criteria. The revisions permit these operators to follow an alternate means of compliance for certain commercial operations.

EFFECTIVE DATE: November 17, 2003. A person who conducted flights before November 17, 2003 under a program that meets the definition of a fractional ownership program in § 91.1001 may not conduct such flights after December 17, 2004 unless it has obtained management specifications under this final rule.

FOR FURTHER INFORMATION CONTACT: Katherine Hakala Perfetti, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3760, email: *katherine.perfetti@faa.gov.*

SUPPLEMENTARY INFORMATION:

General Abbreviations Used in This Preamble

AFM Aircraft Flight Manual
ATC Air Traffic Control
ATP Airline Transport Pilot
CAMP Continuous Airworthiness Maintenance Program
DOM Director of Maintenance
FACA Federal Advisory Committee Act
FL Flight Level
FOARC Fractional Ownership Aviation Rulemaking Committee
FSDO Flight Standards District Office
GPWS Ground Proximity Warning System
ICAO International Civil Aviation Organization
IFR Instrument Flight Rules
IMC Instrument Meteorological Conditions
MEL Minimum Equipment List
NEPA National Environmental Policy Act
NM Nautical Miles
NTSB National Transportation Safety Board
PIC Pilot in Command
RVSM Reduced Vertical Separation Minimum Airspace
SIC Second in Command
STC Supplemental Type Certificate
TCAS Traffic Alert and Collision Avoidance System
VFR Visual Flight Rules
VMC Visual Meteorological Conditions
V_{REF} Designated Landing Approach Speed

History and Background

In 1986, Executive Jet Aviation, Inc. (EJA), created a new program that offered aircraft owners increased flexibility in the ownership and operation of aircraft by individuals and corporations. The program offered shared aircraft ownership (fractional ownership), and provided for the management of the aircraft by an aircraft management company. Aircraft owners participating in the program agreed to share their aircraft with others having an ownership interest in that aircraft, as well as to lease their aircraft to other owners in the program that did not have an interest in that aircraft. The aircraft owners used the common management company to maintain the aircraft and administer the leasing of the aircraft among the owners. An FAA regional determination allowed this fractional ownership program to operate under 14 CFR part 91.

Since that time, the number of companies offering fractional ownership programs has grown. During the 1990s this growth was substantial and sustained. As of early 2000, the leading fractional ownership programs managed approximately 465 aircraft on behalf of 3,446 shareowners. By the end of 2001 there were over 3,500 owners of more than 5,000 shares of 650 aircraft. Growth in fractional ownership programs is expected to continue to increase.

While most fractional ownership programs are conducted under 14 CFR part 91, some are conducted under 14 CFR part 135. Of those operating under part 91, the FAA believes that most follow the ''best practices'' of corporate aviation. FAA and NTSB accident data for U.S.-registered turbine powered aircraft during the period from 1990—2001 shows that fractional ownership aircraft operations are conducted with a high degree of safety.

As fractional ownership programs have grown in size, complexity and number, there has been much controversy within the aviation community whether the FAA should regulate these programs under part 91 or under part 135 on-demand operations. Also, the FAA has had concerns about accountability and responsibility for compliance and about maintaining a high level of safety. Consequently, the FAA continued its analysis of the appropriate regulatory environment for these programs.

Operational Control and Regulatory Responsibility

The FAA's objective is to establish the appropriate level of regulatory oversight to ensure safe aircraft operations. The FAA regulations have always contained different levels of FAA oversight depending on operational control and compliance responsibility. Airline passengers exercise no control over and bear no responsibility for the airworthiness or operation of the aircraft on which they are passengers. The air carrier exercises control of the operation and bears responsibility for compliance with the regulations. Because the air carrier is a commercial enterprise in the business of air transportation for the public, the FAA imposes on the air carrier stringent regulations and oversight under part 121 or part 135, as appropriate.

In contrast, aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft. Under these circumstances, the FAA has determined that the appropriate level of oversight is provided by the regulations in part 91, which are generally less stringent than those of part 121 or part 135. Part 91 regulations cover what is commonly called general aviation, which includes individual pilot/owner operations and corporate owner operations.

Business aviation in large and turbine-powered multiengine airplanes is regulated under part 91, subpart F. In creating subpart F (originally subpart D; 37 FR 14758, July 25, 1972), the FAA continued its long-standing policy that corporations may operate their aircraft under part 91. The FAA allowed for different arrangements in the loan,

exchange, and sharing of the aircraft. Current § 91.501(b)(4) allows a person to operate his or her aircraft ''for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation.'' Current § 91.501(b)(5) allows for the carriage of ''officials, employees, guests, and property of a company on an airplane operated by that company * * * when the carriage is within the scope of, and incidental to, the business of the company * * * Current § 91.501(b)(6) allows for time-sharing arrangements, interchange agreements, and joint ownership arrangements. Some of these arrangements include the use of a management company that provides maintenance and other services to the owners.

A consideration for applicability under part 91 in any of these arrangements is that the corporation cannot be established solely for the purpose of providing transportation to a parent corporation, subsidiary, or other corporation. In such a case, the corporation operating the aircraft would be in the business of transportation and would have to hold an air carrier certificate under part 121 or part 135, as appropriate.

Fractional ownership programs have some of the elements of traditional management services companies, but because of the size and complexity of today's fractional ownership programs, the part 91 rules are not adequate. The part 121 and part 135 rules are not appropriate either because those rules are directed at air carriers and other entities that hold themselves out to provide transportation to the general public.

Fractional Ownership Aviation Rulemaking Committee

In October 1999, the FAA convened a special aviation rulemaking committee, the Fractional Ownership Aviation Rulemaking Committee (FOARC), pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), to address the issues surrounding the regulation of fractional ownership program operations. Pursuant to the order of October 6, 1999, that established the FOARC, the committee's objective was to ''propose such revisions to the Federal Aviation Regulations and associated guidance material as may be appropriate with respect to fractional ownership programs.''

The FOARC was comprised of 27 members selected by the FAA as representative of the various constituencies interested in regulation of fractional ownership program operations. Designated advisers and counsel assisted the FOARC.

FOARC members represented on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations. Representatives of the FAA, the U.S. Department of Transportation and foreign civil aviation authorities were also included.

The FOARC met for nine days in November and December 1999. Within the FOARC's meeting schedule, two days were set aside for public hearings to provide the public an opportunity to comment or present positions on this issue. Notice of these public meetings was provided in the **Federal Register** (64 FR 66229, November 24, 1999) and through the media. The FAA reviewed and considered all material presented by participants at the public meetings. The FOARC presented its initial recommendations to the FAA on February 23, 2000. Those recommendations provided the basis of the FAA's NPRM, published in the **Federal Register** on July 18, 2001 (66 FR 37520). The comment period for the NPRM ended on November 16, 2001. The FAA is issuing this final rule, based on the recommendations of the FOARC committee and the FAA's consideration of the public comments received on the NPRM.

Summary of Final Rule

This rule establishes a new subpart K in part 91 to cover fractional ownership operations. The new Subpart K clarifies what qualifies as a fractional ownership program, clarifies who has operational control, defines operational control responsibilities, codifies many of the ''best practices'' now being used voluntarily in fractional ownership programs, and incorporates many of the safety standards of part 121 and part 135. By this rulemaking, the FAA establishes safety standards to maintain the safety record of current fractional ownership programs and to ensure that new fractional ownership programs will also meet a high level of safety.

In brief, new subpart K accomplishes the following:

(1) It establishes the criteria for qualifying as a fractional ownership program.

(2) It establishes that fractional owners and the management company share operational control of the aircraft and delineates operational control responsibilities.

(3) It establishes regulatory safety standards for operations under fractional ownership programs, including management operations, maintenance, training, crewmember flight and duty requirements, and others.

This rulemaking also revises certain requirements in part 135 on-demand operations. Many of the requirements in new subpart K of part 91 are based on requirements for on-demand operations in part 135. In the process of reviewing part 135 requirements, the committee and the FAA determined that some of the current part 135 requirements needed to be updated in accordance with new technology and other changes. The FOARC studied the best practices of the fractional ownership programs to determine under what circumstances part 135 operations could use those practices as an alternate means of compliance with part 135 standards. For example, FOARC recommended that on-demand operators be allowed to land at airports without weather reporting facilities, provided the flight plan includes an alternate airport that has such facilities and they carry additional fuel to fly to that alternate airport. Further, this eligible on-demand operation must provide a 2-pilot crew with increased pilot experience and that meets crew pairing standards. In addition proving test requirements for both fractional ownership programs and part 135 on-demand operations were reviewed and amended. A proving test requirement was added for fractional ownership programs and the requirement for multiple proving tests for part 135 operations was amended.

Specific requirements in subpart K and revisions to part 135 are discussed in detail in the public comment discussion that follows.

Discussion of Public Comment

The FAA received approximately 230 comments in response to the NPRM. Approximately 60 comments specifically address a concern related to noise and environmental issues at Santa Monica airport, 30 comments are from aircraft dispatchers, and 28 comments are from individual pilots. The rest of the comments are from major industry associations, aviation companies and interested individuals. The comments can be reviewed on the Internet at *http://dms.dot.gov.*

Commenter Abbreviations Used in This Preamble

ADF Airline Dispatchers Federation
AOPA Aircraft Owners and Pilots Association

Avex The New Avex, Inc.
CAA Civil Aviation Authority of the United Kingdom
EHANAC East Hampton Airport Noise Abatement Committee
EJA Executive Jet Aviation, Inc.
Flexjet Bombardier Business Jet Solutions, Inc.
GAMA General Aviation Manufacturers Association
GM General Motors Air Transportation Section
IBT International Brotherhood of Teamsters, AFL–CIO
NATA National Air Transportation Association
NBAA National Business Aviation Association
NWJ New World Jet Corporation
PASS Professional Airways Systems Specialists
SAMA Small Aircraft Manufacturers Association
Teamsters Teamsters Miscellaneous and Industrial Workers Union, Local No. 284

General Support

Several commenters express general support for the NPRM and for the work of the FOARC. Aviation Resources Management states that it fully supports the proposed rules and that the process used in their development was not only fair and impartial but was a remarkable example of accomplishment through cooperation between industry and government. Eclipse Aviation states that as a manufacturer of an aircraft that will be used extensively in fractional ownership programs, Eclipse strongly endorses the safety measures provided to the fractional customer by proposed subpart K to part 91. General Aviation Manufacturers Association (GAMA) states that as fractionally owned aircraft programs have already demonstrated their safety and efficiency while operating under part 91, it strongly supports the new rule. GAMA adds that these programs benefit the traveling public by dramatically increasing their options for air transportation and that the growth of these programs should not be hindered.

Some commenters identified specific parts of the proposed rules that they believe will be particularly effective. Robert E. Breiling Associates believes the proposed landing requirements, weather criteria for approach and departure and more realistic night operation requirements would give new flexibility to part 135 operators. These proposed requirements would not only allow them to operate to and from many other airports and runways previously not available to them. The proposed requirements would also help reduce traffic at some of the more congested airports. Alpha Flying, Inc. strongly supports the flight and duty time requirements, and runway length and weather reporting requirements in the proposed rule. Alpha believes the proposed requirements could provide relief to charter operators who have been unnecessarily burdened operationally and economically by rules that are out-of-date. Alpha believes that weather reporting services now available, vast aircraft equipment improvements and aircraft certification rule changes that have been put in place since the runway length and weather reporting rules were written justify the proposed changes.

A flight operations manager comments that it is important that the people who developed the proposed rule actively work with the FAA to develop Handbook guidance for compliance when the proposal becomes a final rule.

FAA Response: The FAA appreciates the support of these commenters. In the final rule the FAA has tried to achieve the goals of FOARC, while carefully considering the comments from both supporters and those who oppose the FOARC proposals. After considering all the comments on the specific proposals and further research by FAA experts, the FAA has made some changes in the final rule. These changes and the reasons for each are discussed below under the specific topics.

In regard to implementation of the final rule, the FAA has set up an implementation team to plan for development of guidance material, inspector training, inspector assignment, and oversight and surveillance policies. The FAA plans to complete these products by the effective date of this rule. The FAA is committed to working closely with industry to implement this final rule.

General Opposition

Most of the commenters who state general opposition to the proposed rule take the position that fractional ownership programs are essentially on-demand operations that the FAA should regulate under part 135. Generally, these commenters believe that the Committee and the FAA fail to recognize that the program manager of a fractional ownership program is essentially promoting on-demand service. In the NPRM, the program manager is the entity that sets up a fractional ownership program and that hires an individual to run the program.

Approximately 28 commenters identify themselves as pilots with fractional ownership programs, of whom at least 10 are with EJA. Most of the pilots oppose the proposed inclusion of fractional ownership in part 91. They believe the FAA should require fractional ownership programs to operate under part 135. In addition to general opposition, some pilots made specific comments that the FAA addresses under the appropriate issue or section.

The Civil Aviation Authority of the United Kingdom (CAA) states that ''. . .the proposal appears to be contrary to the provisions of the Chicago Convention which defines a commercial transport operation as an aircraft operation involving transport of passengers, cargo or mail for remuneration or hire.'' The French Direction Générale de l'Aviation Civile submitted a similar comment.

One commenter cites a U.S. Federal Circuit court ruling that held a fractional ownership program to be a ''commercial operation'' for certain tax purposes and questions how the FAA can ignore this ruling.

Jet Sales & Services, Inc., states that the preamble states no justification to require increased regulation. This commenter states that a group of aircraft owners should have the same rights and privileges as those who can afford total and individual ownership.

While not opposing the entire NPRM, the National Transportation Safety Board (NTSB) states its concern for any part 135 changes in this rulemaking. The NTSB states that it will withhold judgment about the adequacy and appropriateness of the proposed subpart K requirements until it has had the opportunity to monitor accidents, incidents, and other developments related to fractional ownership.

Some commenters state that the FAA should issue another NPRM before issuing a final rule on fractional ownership. Commenters think this is necessary for various reasons, including the size of the NPRM and the lack of balance of the FOARC.

FAA Response: The FAA carefully considered the question of where to place the rules governing fractional ownership programs. It studied current fractional ownership programs, finding that this segment of aviation has a very high safety record through compliance with voluntary safety standards that in many cases exceed the regulatory standards. It is the FAA's goal in this rulemaking to maintain this safety record.

In determining the appropriate regulatory part for fractional ownership programs, the FAA recognizes that fractional ownership programs contain elements of private ownership and use of a management company that are similar to a traditional management company operation under part 91. The

role of the management company is to provide aviation expertise and services to the owner and the program manager does not hold out to the public to provide air transportation. Fractional ownership programs differ from the traditional management company model in the size and complexity of the program operations, reducing the individual owner's ability to exercise operational control. Therefore, the FAA determined that the appropriate approach is to regulate fractional ownership programs under part 91, but to define operational control responsibilities and procedures and to prescribe added safety requirements appropriate to the size and complexity of those operations. These standards mirror corporate best practices, the voluntary standards used by existing fractional ownership programs, and the regulatory standards of part 121 and 135, as appropriate. In response to the CAA and the French Direction Generale de l'Aviation Civile comments, the FAA views fractional ownership programs to be private operations and therefore not subject to the commercial transport standards and definition. A U.S. federal circuit court determined fractional ownership programs are commercial operations for tax purposes. *See Executive Jet Aviation, Inc.* v. *U.S.,* 125 F.2d 1463 (Fed. Cir. 1997). Tax law does not govern safety rules. The FAA considers fractional ownership programs private operations for safety and operational control purposes.

The changes made to part 135 in this rulemaking are based on a comparison of current part 135 requirements to part 91 fractional ownership and corporate programs. Part 135 was amended where safety could be maintained while offering an alternative method to achieve the same safety goal. These procedures and amendments were based in part on the best practices and demonstrated safety record of corporate aviation and fractional ownership programs.

Like the NTSB, the FAA intends to closely monitor both part 91, subpart K, and part 135 operations following the implementation of this rule to identify any trends or safety concerns related to the requirements of this rule.

Some commenters encouraged the FAA to issue a supplemental NPRM. The FAA is issuing a final rule because the changes made to the rule language are within the scope of what the FAA proposed in the NPRM. Commenters made many helpful suggestions, including suggested technical edits and cross-references, some of which the FAA has incorporated into the rule. Comments that are beyond the scope of the NPRM, would result in a substantive change to the rules, or identify new issues are being considered for future rulemaking. The FAA has determined that it is in the public interest to publish a final rule now to establish and maintain a safety standard for fractional ownership programs.

Extension of Comment Period

Several commenters asked the FAA to extend the comment period to allow more time for public input. NTSB stated that the September 11, 2001, events have raised public concern about the security of air carrier operations and will likely further increase the demand for fractional ownership and the potential for safety issues associated with expanded operations. The NTSB asked for a 90-day extension of time to evaluate the proposed changes and the related safety issues. The National Business Aviation Association (NBAA) and the National Air Transportation Association (NATA) noted that since September 11, the Nation, and the aviation community in particular, have directed many resources to restore our air transportation system. NBAA and NATA requested an extra 30 days to allow all interested parties more time to prepare well-developed, thoughtful comments on the proposed regulation. An individual sought a nine-month time extension to allow the pilots affected by these proposed changes, but excluded from FOARC, to adequately review the safety implications of this NPRM and suggest changes.

FAA Response: In response to the commenter requests, the FAA extended the comment period to November 16, 2001 (66 FR 52878, October 18, 2001).

FOARC's Membership Balance

Many commenters state that the Committee did not represent all potentially interested parties. They specifically mentioned pilots, fractional owners, airports and airport community interest groups. They also wrote that publication of a Notice of Proposed Rulemaking by itself did not overcome the built in bias of the Committee.

One commenter states that the FOARC was not ''fairly balanced'' as required by 14 CFR 11.27 and the Federal Advisory Committee Act (FACA) because pilots did not participate in the process.

The Teamsters state that the FOARC consisted essentially of three groups. First, fractional providers who feared that they would be regulated under part 135. Second, on-demand part 135 operators that see fractional owners as running a similar operation but under less stringent, and therefore less costly, rules. Third, corporate flight departments and their trade organizations that feared negative consequences for them if the FAA were to choose to regulate fractional operators under part 135. This commenter suggests there would have been no committee consensus without the proposed changes to part 135 that benefited persons currently operating under that part. This commenter also questions why a committee set up to address the issue of fractional ownership would have anything to do with part 135 operations. Other commenters make the same point.

NATA states that a notice of public meetings was published in the **Federal Register.** NATA also states that inferences made by some commenters to this rulemaking about ''backroom'' deals are misleading. The commenter points out that such inferences ignore the opportunity for public involvement in the process and the presence of DOT and FAA representatives at all FOARC meetings.

FAA Response: The Fractional Ownership Aviation Rulemaking Committee was established by an order issued by the FAA Administrator on October 6, 1999, pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5). This section states that ''The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council or such aviation rulemaking committees as the Administrator shall designate.'' Therefore the activities of the FOARC were not subject to the requirements of the Federal Advisory Committee Act. Nevertheless, the FAA balanced the makeup of the committee so that the FAA could learn the various perspectives of persons involved in fractional ownership operations and other segments of the aviation community that the proposed regulations may affect. This included part 135 operators, aircraft manufacturers, corporate flight departments, aircraft financing and insurance companies, and industry trade associations. About the issue of pilot representation, to the FAA's knowledge, only one fractional ownership program has union representatives for a portion of its pilots. Therefore, there is no single, recognized organization that could speak for fractional ownership pilots across-the-board. Nevertheless, there were individual pilots on the FOARC, representing both fractional ownership programs and part 135 operators.

In addition, as described earlier in this preamble, the FAA held a public meeting to invite the views of other interested parties. Finally, the FAA

published the NPRM and provided a public comment period in accordance with the Administrative Procedure Act. This comment period allowed all interested parties, whether they were FOARC members or not, to provide added insight, comments, and suggestions for changes to the proposal. The FAA received over 230 public comments and has carefully reviewed the many views and suggestions provided in those comments. Therefore, the FAA does not agree that this rulemaking suffered from a lack of balance or a lack of opportunity for all interested parties to express their views.

Environment and Noise

Many commenters are concerned about the environmental and noise impacts of this proposed rule on local airports. Most of these comments (approximately 60) are from organizations and individuals in the neighborhood of the Santa Monica, CA, Airport. Commenters from the vicinity of Flying Cloud Airport in Minnesota and East Hampton Airport in New York also address this issue.

Most of these commenters state that the FAA must comply with the National Environmental Policy Act (NEPA) before proceeding to a final rule. An individual asks that the FAA conduct ''an environmental assessment or environmental impact statement to fully and fairly define and disclose the environmental impacts that will flow'' from the proposed rule. Santa Monica Airport, the North Westdale Neighborhood Association, the East Hampton Airport Noise Abatement Committee (EHANAC), and Friends of Sunset Park Neighborhood Association believe that the FAA should study the impact of fractional ownership on communities and schools that are near general aviation airports. Residents of Sunset Park are concerned that altering the 60 percent rule and creating subpart K will significantly increase the volume of business jet traffic, bringing with it an increase in air and noise pollution. The Los Angeles Unified School District is concerned about regulatory changes that may increase noise levels and air emissions at several of their schools underlying the approach to Santa Monica Airport.

An individual states that relaxing an existing limit on runway use and requirement for instrument flight rules (IFR) destination airport weather reporting would authorize a whole new class of airports to be opened to a new class of aircraft. This would increase noise and adversely impact the quality of the human environment for unknown numbers of individuals. This commenter does not believe that this rulemaking qualifies for a ''categorical exclusion'' from the requirements of NEPA, stating that ''The FAA has an affirmative obligation to disclose adverse environmental impacts that will flow from an agency action.''

NATA submitted a comment in response to these comments stating that the FAA was not obligated to do an environmental assessment or prepare an environmental impact statement in situations where the FAA is promulgating safety rules that are not likely to have a significant impact on the environment. The commenter points out that the FAA is not responsible for the growth of fractional ownership programs. According to the commenter, if the rulemaking results in a greater use of small airports, this may have a positive effect because of a more efficient allocation of aircraft activity among large and small airports.

FAA Response: The FAA understands its obligations under NEPA and takes its responsibilities seriously. The FAA based its determination that this rulemaking qualifies for a categorical exclusion from the requirement to prepare an Environmental Assessment under NEPA on the instructions in FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. Appendix 4, section 4, lists issuance of ''regulations, standards, and exemptions'' as one of the categorically excluded actions that the FAA's Associate Administrator for Regulation and Certification may take. As with most of FAA's operating rules, any environmental impact would come not from issuing the rule, but from approving specific operations under the rules. For example, Order 1050.1D spells out how the FAA considers environmental impacts when issuing operations specifications for part 121 and part 135 operators. The FAA normally prepares an environmental assessment before issuing operations specifications for scheduled operations. For on-demand operations, an environmental assessment would not be prepared unless the proposed operation would significantly change the operating environment of the airport that serves as the home base for the operator. NEPA requires the FAA to consider the ''foreseeable environmental impacts'' of its actions. Therefore it is difficult for the FAA to assess impacts on destination airports for particular on-demand operators, because those destinations are unknown at the time of the approval. Similarly, for fractional ownership programs, it would be difficult to identify destination airports, since fractional owners may choose to go to any airport. Again, the FAA can only look at the potential impacts on the home base airports. It has been determined that management specifications will be treated the same as operations specifications for NEPA purposes. Therefore, the same principles will apply.

On the weather reporting issue, the FAA does not expect a significant impact because the number of part 135 operators who can do this will be limited. The rule applies only if the airport has no weather reporting but has instrument approach procedures, the operator is authorized to conduct IFR operations, the weather is instrument meteorological conditions, and the operator meets the eligible on-demand conditions. Therefore the FAA cannot make an estimate of the number of operations that would be increased. Fractional ownership programs can currently operate into airports without weather reporting. This rulemaking imposes extra restrictions that could limit some operations.

The requirements for performance planning could potentially increase the number of airports that part 135 operators could use, but would impose limits on some part 91 fractional operations that can currently use any suitable airport runway. Under the final rule, only eligible on-demand operators under part 135 would be able to take advantage of reduced runway requirements and only under certain conditions. The changes to the performance rules will restrict some fractional ownership operations, which currently have no regulatory limits. The FAA cannot estimate the number of airports or operations that would be affected, as performance planning incorporates many variables and, because of the on-demand nature of these operations.

FAA Oversight and Staffing

Professional Airways System Specialists (PASS) is concerned that the proposed rule would not require the necessary oversight and surveillance by FAA safety inspectors to ensure the level of safety desired. The management specifications, training manual and program managers operating manual need to be clear and approved by the Administrator so there is little controversy on what the program managers, flightcrews, maintenance personnel and fractional owners are required to do to ensure compliance with the regulations. Similarly, Style Air comments that the FAA currently does not have sufficient staff to service part 135 operators efficiently. This commenter believes that the addition of

trained inspectors should be addressed before any implementation of new regulations, and that specific procedures for FAA oversight and enforcement should be provided in the new regulations. An FAA inspector expresses concern over ''how the field inspection will make a determination as to the type of operator he/she is conducting a surveillance on * * *''

FAA Response: The FAA agrees that the success of these regulations is dependent on the quality of the oversight and surveillance provided by FAA inspectors and local Flight Standards District Offices (FSDO's). Therefore the FAA has established an implementation team that is developing standards and guidance for the use of both Headquarters and field personnel who will be responsible for reviewing fractional ownership programs policies and procedures, approving training programs, and issuing management specifications. The implementation team has reviewed staffing levels and qualification standards for aviation safety inspectors and made recommendations to ensure that inspectors have the necessary knowledge, skills, and abilities to oversee fractional ownership programs. The implementation team is working with PASS on assessing these staffing needs. In addition, the team is drafting specific guidance for field offices and inspectors to provide instructions and criteria for conducting the reviews and approvals required before fractional ownership programs may operate under subpart K. The level of oversight and surveillance and inspection activities provided to specific companies will be appropriate to the size and complexity of the operations being conducted and will be comparable to that provided to part 135 on-demand operations. The FAA believes that these implementation plans and products fully address the concerns expressed by the commenters.

Owner-Piloted Multiple-Owner Aircraft (*See* also § 91.1001)

Several comments focus on how the rule would affect co-ownership arrangements of aircraft by pilots, and owner/pilot operation of aircraft.

Four commenters (Aircraft Owners and Pilots Association (AOPA), GAMA, Lawyer Pilots Bar Assoc. and NATA), state that the rule or the preamble should clearly distinguish between the multiple owner/pilot and similar arrangements that would continue to be regulated under the existing part 91 and those arrangements that would be considered fractional ownership programs and be regulated under the proposed subpart K.

NBAA states that the FAA should account for aircraft ownership mechanisms other than fractional ownership programs in the final rule. NBAA believes that any programs that do not precisely fall within the definition of fractional ownership should be subject to regulations other than subpart K. An example would be a company that provides aircraft management services for aircraft that are flown solely by the owner. NBAA is concerned that the qualifications under § 91.1001(b) would inadvertently require owner-flown shared aircraft programs that use a management company to schedule aircraft among owners to comply with subpart K, when they would be better addressed as flying clubs. NBAA provides regulatory changes that would further clarify the types of operations subject to subpart K and prevent the inadvertent application of this regulation on other ownership and service options such as flying clubs, joint ownerships, time-shares and traditional aircraft management.

Another commenter, the Small Aircraft Manufacturers Association (SAMA), notes that the proposed subpart K defines a fractional ownership program in a way that would include owner-pilot shared ownership programs in which the program manager does not offer or provide the flightcrews. According to the commenter, owner-pilot shared ownership programs that would technically meet the proposed definition of a fractional ownership program under § 91.1001(b) did not exist when the FOARC made its recommendations to FAA in early 2000. The FOARC did not hypothesize their formation and therefore did not consider their appropriate regulation. These owner-pilot shared ownership programs have since been established, generally providing piston-powered single engine airplanes, and currently are appropriately regulated under part 91, without reference to subpart F. It appears that neither the FOARC nor the FAA intended to regulate these programs under subpart K. According to the commenter, these programs are similar to flying clubs, partnerships and management services arrangements, but do not exactly match any of these traditional forms of shared aircraft ownership.

The goal of this commenter's proposed amendment is to avoid changing the regulation of owner-pilot shared ownership programs that are permissible today under part 91. Because these programs provide safety benefits, the FAA should facilitate the emergence of these forms of small aircraft ownership and operation by clearly describing in the rule and in related guidance materials activities under such programs. This commenter suggests specific final rule preamble language that would clarify that the intent of the rule is not to cover the types of operations described by the commenter. In contrast, The New Avex, Inc., (AVEX) states that the proposal is short sighted because it excludes the opportunity for individuals to share ownership of light, single-engine turboprops.

Similarly, NATA and Bombardier Business Jet Solutions, Inc., (Flexjet) understand that some systems of aircraft ownership and use have been created, or soon will be created, that involve only owners that intend to act as the pilot during the owner's use of the aircraft. Some of these programs may include elements commonly found in fractional ownership programs, such as multiple owners of an individual aircraft, a single aircraft manager, and a dry-lease pool of multiple aircraft. Although these programs may technically fit the applicability requirements of subpart K, these commenters do not believe that such programs should be subject to subpart K. According to the commenters, a program that consists solely of owners that will always be the pilots when they use their aircraft is likely to appeal to a far different owner than would the fractional ownership programs that were the focus of FOARC's and FAA's review. Such a program does not require the enhanced provisions of subpart K and would more appropriately be regulated under existing regulations.

SAMA, NATA and Flexjet believe that the fundamental difference between a pilot-owner program and fractional programs as envisioned by subpart K is that the program manager in a pilot-owner program is not responsible for providing any pilots. One of these commenters recommends excluding exclusively pilot-owner programs from subpart K by revising the definition of fractional ownership program management services in proposed § 91.1001(b)(7). Under this recommended definition, subpart K would apply if the manager provided even a single pilot to any aircraft owner. However, if one of the owners served as the pilot in all program operations, the program would not be subject to subpart K. Another commenter recommends amending § 91.1001(b)(7) to include ''the offering or provision of flight crews'' as well as providing related guidance material that would apply subpart K only to shared ownership programs where the program manager offers or provides the flight crew.

Similarly, AOPA states that, while there is a presumption that subpart K operations include or require a professional flight crew provided by the program manager, this is not specifically stated in the regulation. Therefore, AOPA proposes that a sixth criteria be added under § 91.1001(b)(1) to state the requirement that professional flight crew services must be provided by the program manager. In support of this sixth criteria, AOPA also proposes that § 91.1001(b)(7) be further defined to include a provision for a professional flight crew. AOPA believes that the development of subpart K did not envision or intend to regulate smaller piston powered single- and multi-engine aircraft that otherwise meet the five criteria of § 91.1001, but do not use professional program pilots and that providing a flight crew is an important distinction between a multiple aircraft ownership arrangement versus a fractional ownership program.

The Lawyer Pilots Bar Association states that the NPRM clearly intends to apply to fractional programs in which paid professional crews are employed to fly the aircraft. This Association says that the NPRM was not intended to apply to limited co-ownership arrangements of small aircraft that do not involve a management company and in which one or more of the co-owners are commercial-pilots and provide the piloting. According to this commenter, the rule is not clear whether pilots may participate as owners-pilots in subpart K fractional programs without being subject to the increased crew requirements while they are piloting their co-owned aircraft for their own personal and business transportation. The commenter urges the FAA to make the final rules of subpart K clear so that a pilot co-owner may participate in a fractional ownership program without having to meet the additional crew requirements.

Eclipse Aviation mentions that proposed subpart K sets forth very specific crew pairing, experience, flight, duty and rest time requirements, and that for the owner-pilot, many of whom will be qualified to conduct single-pilot operations, the crew pairing requirements of proposed § 91.1055 are unnecessary. Further, for the single-pilot operator, or one who chooses to utilize a second in command (SIC), either by insurance or regulatory necessity, or simply for the sake of added safety, the experience, training and testing, proficiency, flight, duty, and rest time provisions of proposed §§ 91.1053, 91.1057, 91.1059, 91.1063, 91.1065, 91.1069, 91.1081, and other related sections are overly burdensome. Clearly, these safety provisions are appropriate for true fractional program operations. The traditional experience, training, testing, proficiency, flight, duty and rest time provisions, as well as the other safety related provisions of part 91 are sufficient for owner-operated personal or business flights.

FAA Response: The FAA agrees that the proposed applicability section and definitions do not adequately delineate fractional ownership programs intended to be covered by subpart K from other shared aircraft programs or aircraft management programs conducted under part 91. These include operations such as traditional management companies providing services to aircraft owners absent the dry lease exchange provision of subpart K; joint ownership, time-share, or interchange operations under § 91.501; flying clubs; or other shared aircraft ownership options. Each shared ownership arrangement should be reviewed on a case by case basis to determine the appropriate regulatory requirements.

The FAA has amended § 91.1001 to more clearly define the elements of fractional ownership programs and the aviation services provided under those programs. This includes the provision, furnishing, or contracting of crews and the training and qualification of crews and other personnel, as suggested by some of the commenters.

The FAA disagrees with comments that a pilot co-owner should be allowed to participate in a fractional ownership program without having to meet the additional crew requirements. A fractional owner who desires to act as a flight crewmember on a program flight may do so only if the owner meets the pilot experience and qualification requirements of subpart K and is designated as a crewmember for that flight. These pilot requirements are necessary to maintain the safety and integrity of the fractional ownership programs and protect the property interests of all owners in the program.

Some of the commenters on this issue address a situation in a shared aircraft arrangement where the owners do pilot their own aircraft and may use management services for scheduling and maintaining the aircraft or providing occasional pilot services such as flight instruction. These types of programs might more appropriately fit the definition of a flying club or other ownership option not subject to this rule. Likewise, traditional management companies and other management arrangements may not meet all of the definitional elements of a fractional program under subpart K, i.e., dry lease aircraft exchange arrangement, provision of pilots and other crewmembers, etc., and therefore would not be subject to regulation under subpart K.

The FAA recognizes that some entities have marketed or otherwise referred to themselves as ''fractional ownership'' programs prior to this rulemaking, but do not meet all of the elements of the new regulatory definition. The FAA recommends that such programs discontinue the use of the term ''fractional ownership'' to avoid confusion.

Runway Length Required for Landing (§§ 91.1037 and 135.385)

GAMA, NATA, Flexjet and an individual support the proposed rule changes, stating that they would not reduce the margin of safety for operations of fractionally owned aircraft under part 91 or operations under part 135. The proposed runway length requirements provide an adequate margin of safety for the reasons stated in the NPRM.

Spirit Aviation and NATA support the change from requiring the airplane to be capable of landing within 60 percent of the available runway length to 85 percent of the available runway length because of the advancements in technology. Spirit Aviation states that § 135.385 was promulgated before the development of pavement standards at airports and landing strips. In addition, the development of aircraft braking and other performance systems have made the 60 percent factored landing distance requirement antiquated and unnecessary. As reasons to change the requirement from 60 to 85 percent, NATA also mentions improvements in brake certification, changes in the method of calculating Aircraft Flight Manual (AFM) landing distances, and changes in landing distance information for different runway conditions contained in the AFM.

Spirit Aviation and NATA also state that the proposed changes to § 135.385 would enable part 135 operators to better compete with part 91 operators. Spirit Aviation, a part 135 operator, comments that the proposed changes would enable it to more effectively serve its clientele, as well as compete fairly with part 91 competitors. This operator argues that the experience of its pilots, as well as the quality of its training is equal if not superior to that of the corporate aviation community. Spirit Aviation claims that all aviation safety data covering the previous decade show that accident rates under part 91 and part 135 have been nearly identical.

NATA, a FOARC member, (as well as Flexjet) supports the justification

provided in the preamble for the proposed change in runway length. This commenter states that the proposed 85 percent runway length dispatch rule provides a comfortable safety margin for 91 subpart K operations and much needed relief from a redundant and unnecessary restriction for eligible part 135 on-demand operators.

NBAA and New World Jet Corporation (NWJ) support the 85 percent margin, but only under certain conditions. NBAA, a FOARC member, supports the proposal as an available planning option only under optimum conditions for both fractional aircraft ownership operations and for qualified commercial on-demand operations conducted under part 135.

NWJ notes that daylight operations, an experienced crew, and glide slope guidance on the landing runway are examples of conditions meriting the 85 percent runway margin. To maintain an even playing field and level of risk, specific guidance should be provided to the FSDO Inspectors on how to qualify operators according to these conditions. This commenter believes that without such conditions some operators may be too aggressive when applying this rule.

The Teamsters quote from the NPRM, ''Aviation safety data indicate that the landing accident rates under part 91 and part 135 during the previous twelve-year period were nearly identical.'' The commenter asserts that the NPRM in effect provides no justification for changing the 60 percent rule, arguing that the quoted data, if true, argues more for the safety record of part 91 operators than of part 135 operators.

One commenter states that the FOARC's proposed change to runway length does not respect the existing industry best practices regarding the use of thrust reversers. An Aircraft Flight Manual (AFM) typically determines landing distance without the use of thrust reversers. An operator under current part 91, attempting to meet minimum compliance, could land within 85 percent of the effective runway without thrust reversers installed or with the thrust reversers deferred in accordance with an MEL. But this would not be in accordance with the best practices of the fractional program industry. According to the commenter, a reputable fractional program operator would never think of dispatching a pilot into a runway with only a 15 percent margin of error without operable thrust reversers. However, the proposed rule would allow this under subpart K of part 91 and under part 135. The commenter states that several on demand air taxi operators that do not have thrust reversers installed might require pilots to land at the minimum allowed by regulation. If air taxi operators want to land on such runways, this commenter suggests that they have the aircraft manufacturers include reverse thrust in the AFM landing data as long as such data can comply with the provisions in 14 CFR 25.125. These provisions state that aircraft manufacturers may use reverse thrust to calculate landing data if ''[reverse thrust] is safe and reliable; is used so that consistent results can be expected in service; and is such that exceptional skill is not required to control the airplane.''

The commenter also offers the following example: ''* * * when I land at KHXD I can typically stop the Cessna Citation Excel I fly in 2400 feet using reverse thrust. The AFM data indicates that the landing distance should have been 3090 feet.'' The commenter attributes the difference to the use of reverse thrust because he duplicated all other conditions that the AFM specifies.

Two neighborhood associations, EHANAC and Friends of Sunset Park Neighborhood Assoc., submitted comments stating that they oppose the proposed 85 percent rule for part 135 operations because they believe it will create a grave safety hazard at East Hampton Airport, which does not have runway safety areas.

Similar concerns were raised by other commenters. North Westdale Neighborhood Association and Santa Monica Airport worried about the impact of increased traffic at the Santa Monica airport and other similar small airports if the proposed changes to part 135 are imposed. These commenters state that the reduction of the landing runway length required under the 60 percent runway rule will increase access by part 135 business aircraft to thousands of additional airports and increase the weight/size capacity of existing aircraft at many general aviation airports.

One commenter states that the proposed 85 percent rule would carry a great risk because it would allow large jets to land at airports where homes and businesses, including gas stations, are only 100 feet from the runway. Another commenter states that this broad change in the regulation is being proposed without considering the environmental impact or the opinions of the general public. For example, Santa Monica Airport (SMO) has a runway with no safety areas and the runway is no more than 5,000 feet long. Under the proposed change, larger jets requiring more runway length will now be allowed to land. Even though the airport has noise restrictions, any jets that meet the noise abatement requirements will be allowed to fly over nearby homes and businesses, stretching the parameters of safety to the limit.

PASS, an EJA pilot, and an individual mention the existence of several overruns while using a 60 percent margin as a reason to oppose the change to an 85 percent margin. One individual commenter states that currently several fractional operators utilize part 135 landing requirements (60 percent). To the best of this commenter's knowledge, each of the fractional operators and many part 135 operators have had overrun incidents utilizing the current 60 percent rule. Based upon this history, the commenter does not believe it is wise to further reduce the safety margins for required runway lengths.

An EJA pilot states that regardless of FOARC's assumptions of pilot techniques and brake wear, there are pilots who fly the airplane at speeds above V_{REF} (which is the designated landing approach speed) across the landing threshold with worn brakes. This causes a dramatic increase in landing distances, well beyond that recommended by the FOARC. The commenter concludes that there is not enough safety margin available using the 85 percent rule and recommends that the 60 percent rule be applied to fractional operators.

A pilot states that while he can fully appreciate the evidence presented by the FOARC committee for changing the ''60 percent rule'' to 85 percent, he has serious reservations about allowing a reduction below 85 percent as proposed §§ 135.23(r) and 135.385(g) would allow. The commenter believes that even with the stipulated Destination Airport Analysis procedures, the human factor for error will remain and is not quantifiable. Recent part 121 accidents show that landing accidents still happen under what is supposed to be more stringent regulations. The commenter states, ''Let's not deny our passengers, whether he/she is a charter customer or fractional owner, the extra margin of safety that 15 percent affords.''

Executive Jet Aviation, Inc., (EJA) states that the proposed rule needs to be clarified to ensure that while the Destination Airport Analysis program contained in the operations manual must be approved, the operations manual itself does not require approval in that it is an accepted document. Additionally, EJA states that the method of approval (operations specifications) should be indicated.

Kaiser Air, Inc. suggests that § 135.385 (f) (1) and (2) be amended to use consistent terminology (for example,

''still air'' vs. ''probable wind'' and ''most favorable'' vs. ''most suitable.'')

FAA Response: The FAA has studied the discussion in the NPRM preamble, the comments received on proposed § 91.1037 and the proposed changes to § 135.385, the background of the runway limitations for various types of operations, and the relationship between the performance rules in the certification standards and the landing and takeoff requirements in the operating rules. Based on this review, the FAA has decided to modify the proposed 85 percent requirement and to withdraw the proposal to allow a higher takeoff weight than would be permitted under the 85 percent standard if the operator prepares an approved Destination Airport Analysis.

The FAA has determined that the arguments presented in the NPRM preamble for reducing the current part 135 safety margins indicate a misconception regarding the basis and evolution of the current landing distance requirements. The landing distance margin requirements contained in the operating rules applicable to large transport category airplanes are intended to take into account those items that are not included or are not fully addressed in the part 25 airplane type certification landing distance requirements used to determine the landing distances provided in Airplane Flight Manuals. These factors include steady-state variables that are not required to be taken into account in the landing distances determined under part 25, differences in operational procedures and techniques used in actual operations from those used in determining the part 25 landing distances, non steady-state variables, and differences in the conditions forecast at dispatch and those existing at the time of landing. Examples of each of these categories include:

Steady-state variables	Non steady-state variables	Actual operations vs. flight test	Actual vs. forecast conditions
Runway slope	Wind gusts/turbulence	Flare technique	Runway or direction (affecting slope).
Temperature	Flight path deviations	Time to activate deceleration devices.	Airplane weight.
Runway surface condition (dry, wet, icy, texture).		Flight path angle	Approach speed.
Brake/tire condition		Rate of descent at touchdown	Environmental conditions (for example, temperature, wind, pressure altitude).
Speed additives		Approach/touchdown speed	Engine failure.
Crosswinds		Height at threshold Speed control.	

Although this is not intended to be an exhaustive list of variables to be considered, any program to reduce the current landing distance margins, for example, through the use of a Destination Airport Analysis, should address at least these items, and should be substantiated by actual operational landing data.

No evidence exists to show that the current landing distance margin required by § 135.385 was established to compensate for deficiencies in predicting landing performance in the 1930's and 1940's that have since been rectified. One of the primary difficulties in establishing a safe landing distance margin, both now and at the time the landing distance limitations were originally developed, is that it depends on forecasting the landing conditions at the time of dispatch. The landing conditions must be forecast at the time of dispatch because the landing distance limitation is applied as a limitation on the allowable takeoff weight at the time of dispatch such that a safe landing can be made at either the destination or alternate airport. Safety margins are necessary to allow for differences between the conditions forecast at the time of dispatch and the conditions existing at the time of landing.

In addition, since the actual landing distance achieved depends on pilot technique and environmental conditions (for example, crosswinds, gusts), the safety margins must allow for variations in these parameters. Lastly, the procedures and techniques used in flight tests of transport category airplanes to determine AFM landing distances differ from those used operationally (notwithstanding the requirement in § 25.101(f) that states that ''changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established * * * for operation in service''). The flight tests to determine landing distances under § 25.125 are generally treated as demonstrations of the maximum performance (*i.e.,* minimum landing distance) that can possibly be obtained within the constraints of the certification requirements. Especially for large transport category airplanes, but also for many smaller transport category airplanes, the landing distance safety margins required by parts 121 and 135 are relied upon to provide realistic landing distances for use in the operating environment.

FAA policy does not permit consideration of the effect of thrust reverse in calculating landing distances. Part 25 allows means other than wheel brakes to be taken into account if that means is safe and reliable, is used so that consistent results can be expected in service, and is such that exceptional skill is not required to control the airplane. Nevertheless, the FAA has not found thrust reversers reliable enough to allow landing distances to be based on their use. This policy provides some additional safety margin for airplanes with reversers that are operable and used in combination with (not in lieu of) maximum braking from wheel brakes and spoilers. If the FAA were to allow the use of reverse thrust as a condition for using, for example, an 85 percent factor for calculating landing distances, the result would be to assign an arbitrary performance capability to reverse thrust, which may or may not be met by different airplane/engine/reverse thrust combinations. Also, it would be inconsistent with the treatment of reverse thrust by the FAA for airplane type certification purposes, which has not allowed landing distances to be based on the use of reverse thrust.

In regard to the NPRM discussion of improved airplane certification guidelines, many of the guidelines referenced as improvements either date back to the era when the 60 percent rule was implemented or were put in place to limit the use of potentially hazardous flight test techniques to demonstrate short landing distances. For example, the limitations on approach angles and touchdown rates of descent were instituted in response to the steep approaches and hard landings used to

obtain shorter landing distances. Although that type of flight test demonstration of maximum performance is no longer considered acceptable, the methods of determining the resulting landing distance parameters used to calculate the AFM landing distances still result in the same distances as had been obtained with that type of demonstration. Therefore, although the risk in flight testing has been reduced and any further deterioration in safety margin prevented, landing distances atypical of actual operations are still being achieved under part 25. This holds true for all part 25 airplanes, independent of size or intended type of operation.

The claim that improvements in certification guidelines have reduced the need for the current part 135 (or part 121) safety margin is incorrect. The current certification guidelines for transport category airplanes were established assuming the use of the 60 percent rule, which ensures a margin of safety consistent with the number of variables and the degree of variation that might occur in actual operations. For example, in certification of one large transport category airplane, data showed that the safety margin would only allow for either a rate of sink at touchdown of no less than 3 ft/sec, a glideslope of no less than 2 degrees, or a speed no more than about 10 percent higher than the designated approach speed. In this case, the 60 percent margin would be entirely used up for a rate of descent at touchdown of 4 ft/sec, a glideslope of 2.5 degrees, and an approach speed 5 knots higher than the no wind approach speed, all of which may be reasonably expected to occur in operational landings.

A table similar to that shown in the NPRM, but highlighting issues that may result in longer landing distances, illustrates the necessity of an adequate operational safety margin:

Certification criteria	Operational consideration	Effect on safety margin
3.5 degree glideslope angle	2.5 to 3 degrees typical	Actual landing distance will be longer than calculated landing distance.
8 ft/sec touchdown rate of descent	2 to 4 ft/sec typical	Actual landing distance will be longer than calculated landing distance.
Assumes all approach speed additives bled off before reaching the 50 foot height.	5 to 10 knots exceedances not uncommon	Actual landing distance will be longer than calculated landing distance.
	Longer flare distance (''float'')	Actual landing distance will be longer than calculated landing distance.
	Less than full braking effort	Actual landing distance will be longer than calculated landing distance.
	Delays in obtaining full braking configuration	Actual landing distance will be longer than calculated landing distance.
	Higher temperatures not accounted for (temperature accountability not required).	Actual landing distance will be longer than calculated landing distance.
	Downhill runway slope not accounted for (runway slope accountability not required.	Actual landing distance will be longer than calculated distance.distance
	Icy, slippery, or contaminated runway surface	Actual landing distance will be longer than calculated distance.
	Airplane heavier at time of landing than predicted at time of dispatch.	Actual landing distance will be longer than calculated distance.
	Airplane higher than 50 feet over the threshold.	Actual landing distance will be longer than calculated distance.
	Airport pressure altitude higher than predicted at time of dispatch.	Actual landing distance will be longer than calculated distance.

The NPRM preamble states that if the 60 percent requirement were necessary for part 91 operations, business jets operated under part 91 should have a higher rate of runway overshoot events than on-demand operators have under part 135. The preamble states that such a difference has not been observed, and that landing accident rates under part 91 and part 135 have been nearly identical during the previous 12-years. The preamble cites a report prepared by Robert E. Breiling Associates of Boca Raton, Florida. The report concludes, ''it would appear that the 40 percent safety factor in present use for FAR 135 is excessive. A factor based on actual aircraft performance on contaminated runways with the inclusion of a 10 percent to 20 percent safety factor would be more appropriate.'' However, a closer look at the Breiling report reveals that 73.8 percent of all business jet accidents/incidents occurring in the landing phase involved part 91 operations, while 26.2 percent involved part 135 operations. Accident/incident rates cannot be inferred directly from this information, however, as the number of operations conducted under these respective operating rules is not known. Additional problems in trying to draw conclusions from generalized accident statistics like these are that: (1) Many part 91 operators apply part 135 landing distance margins even though they are not required to do so by regulation, and (2) most operations are conducted on runways that are longer than the minimum length necessary to comply with the landing distance limitations.

In 1985, there was a fatal landing overrun of a Lear 24, operating under part 91, at Catalina Airport on Santa Catalina Island, Avalon, California. The runway length at Catalina Airport is 3,240 feet long. Without any safety margin, the Lear 24 needs a landing distance of 3,100 feet at the conditions present in the accident. If the 60 percent rule were applied, a landing distance of 5,167 feet would have been required.

As a result of the accident, the NTSB recommended that the FAA issue an operations bulletin directing general aviation safety inspectors and accident prevention specialists to urge operators of transport category airplanes to use safety margins consistent with those required by part 135, or at least a margin consistent with the performance of the emergency brake system on the airplane. The FAA responded to the Board's safety recommendation by issuing Operations Bulletin 86–2, which described the above accident and directed general aviation safety inspectors and accident prevention specialists to take actions in accordance with the Board's recommendation. (This information appears in the current issue

of the General Aviation Safety Inspector's Handbook, Order 8700.1 Change 9, as Paragraph 19 in Volume 2.)

The NPRM notes that a reduced margin would allow a substantial expansion of opportunities for on-demand operators, particularly at airports with a single short runway. The FAA does not believe that the effect would be as large as the NPRM suggests. Although it depends on the specific airplane's performance capabilities, the takeoff distance requirements are usually more limiting than the landing distance requirements, even under the ''60 percent rule.'' For operations predicated on the use of a single runway, a reduction in the landing distance required would not ensure the viability of an operation into an airport. The airplane may not be able to make a subsequent takeoff, or the allowable takeoff weight may be significantly below the weight at which the airplane landed. For example, in the case of the accident at Catalina Island noted previously, if the airplane had landed safely, it would not have been able to take off again at the same weight because it would have needed a longer takeoff distance than was available. Generally, unless the purpose of the flight was to drop off payload, the allowable takeoff weight will need to be higher than the weight at which the airplane landed due to the need to load additional fuel for the return trip.

Based on its consideration of the above issues, the FAA has made changes in the final rule that maintain the level of safety provided by the current 60 percent rule, while providing operators an alternative for seeking approval to use a higher percentage under certain conditions that maintain the level of safety deemed appropriate for these types of operations. The changes are as follows:

1. The FAA withdraws the proposal to allow a landing distance in excess of 85 percent of the effective runway length if appropriate planning, documented in an approved Destination Airport Analysis, shows no compromise of safety. The FAA has determined that planning for landing distances in excess of 85 percent of the effective runway length would not provide an adequate margin of safety.

2. The final rule requires that both fractional ownership programs under subpart K of part 91 and operations conducted under part 135 must, for planning purposes, show that a turbine engine powered large transport category airplane is able make a full stop landing at the intended destination airport within 60 percent of the effective length of the runway. This maintains the safety level provided by the current 60 percent in part 135 and codifies for fractional ownership programs the FAA's recommendation in Operations Bulletin 86–2 that general aviation operators of transport category airplanes use safety margins consistent with those required by part 135.

3. The final rule modifies the 85 percent proposal. Fractional ownership program managers under subpart K of part 91 and eligible on-demand operators under part 135 may apply for approval to plan for a full stop landing at the intended destination airport within 80 percent of the effective length of the runway if the program manager or certificate holder has an approved Destination Airport Analysis in its operating manual. The rule further modifies the alternate airport requirement and provides an 80 percent planning requirement at the alternate airport. The Destination Airport Analysis would establish additional runway safety margins to be applied when the planned landing weight would use more than 60 percent, but less than 80 percent, of the effective runway length, and would be based on analysis of such factors as pilot qualifications and experience, airplane performance data, airport facilities and topography, runway conditions, airport or area weather reporting, appropriate additional runway safety margins, if required, or any other criteria that may affect airplane performance. The Analysis must be approved by the Administrator, not just ''accepted,'' and the operation must be authorized in the management specifications or operations specifications, as applicable.

Operational Control

Ten of the comments on the issue of operational control question the concept, set out in proposed §§ 91.1009 though 91.1013, that a fractional owner is in operational control of an aircraft being operated in a fractional ownership program. These commenters question the NPRM concept of fractional owner operational control from a legal, practical, or technical viewpoint, or from some combination of these viewpoints. Since a significant number of comments, many from individual dispatchers, focus on the need to have qualified dispatchers as part of the operational control team, we have treated the dispatch issue separately in the following section.

In questioning the legal basis for asserting that a fractional owner has operational control, the Teamsters cite a Federal court decision (*Executive Jet Aviation, Inc.* v. *The United States*) that held that for certain tax purposes fractional ownership operators are considered to be commercial rather than non-commercial operations.

Many of the negative comments on the issue of operational control, including those by PASS, cite practical and technical reasons why fractional owners cannot be considered to have operational control. Examples are:

1. The International Brotherhood of Teamsters, AFL–CIO (IBT) states that ''most fractional owners know little about the aircraft, of which they own a part, and they comprehend even less the responsibilities and accountability associated with aircraft airworthiness, safety of flight issues, or the knowledge and accountability associated with the release of or the redirection of a flight for operational or safety reasons.''

2. Jet Sales & Services, Inc. states ''In the real world, it is naïve to think that under any circumstances the owner of the fractional share has operational control other than the scheduling of his or her itinerary. In most cases, that fractional participant has never even seen the aircraft that they own or lease.''

3. The CAA states ''it seems to us that, in practice, the fractional owner will have little or no involvement in the operation other than selecting a competent fractional ownership program manager.''

4. Style Air states that aircraft owners who operate under part 91 ''are usually familiar with who crews and maintains their airplanes'' and that often these owners ''are involved with the decision making process for acquisition, budgets, equipment procurement, and employee issues.'' Style Air states that ''The fractional owner generally has no interest in the specifics of aircraft management,'' and that ''The benefit of the fractional program is to relieve the aircraft owner of these responsibilities.''

5. The Teamsters state that ''the most telling of all parts of a fractional owner's lack of the most basic operational control resides in the management agreements'' and that the ''so-called owner of an aircraft in the program cannot even sell 'his' share of 'his' aircraft to anyone without permission of the program manager.''

FAA Response: Fractional ownership is based on models of traditional aircraft management or corporate aviation in which an owner directly or indirectly employs an individual or entity to provide aviation expertise and services. It is also based on principles of shared aircraft operations defined in part 91. In these models the owner may or may not have the aviation expertise to conduct the operation, but retains the operational control responsibility to ensure the operation is conducted

within the scope and context of the regulations. The size and complexity of the program, the number of owners, and elements such as the dry lease aircraft exchange and aircraft and crew positioning that are unique to fractional ownership programs limit the ability of an individual owner to direct the operation. Therefore, elements and conduct of the program must be established and agreed to by the owners and implemented by regulatory requirements and contractual agreement. Further, the FAA is defining operational control responsibilities and safety standards appropriate to these operations that enable an owner to effectively exercise operational control.

The FAA disagrees with the CAA comment that the fractional owner will have little or no involvement other than selecting a competent fractional ownership program manager. An individual or a corporation has many options to meet their transportation needs. This could include airlines, charter, their own flight department or aircraft, fractional ownership, or others. Each option has benefits and limitations, including costs, operational control responsibilities, flexibility, risk levels, liability, and other factors. These criteria are weighed against the individual's operational needs to make business decisions about which form or forms of air travel best meet their requirements.

Once a person makes a decision to enter into a fractional ownership program as a transportation option, he or she then makes decisions as to the aircraft type, management company, program elements, safety compliance, and size of share to meet their individual travel needs. Moreover, fractional owners may use their own flight crew, provided they meet the requirements of the program and this rule. The fractional owner has the ultimate responsibility to ensure the safety of the operation and compliance with the rules. This regulation specifies the program requirements and assigns responsibilities for these requirements. Owners have a responsibility not only to choose a program and a program manager, but also to ensure that the tasks are completed in accordance with the regulations and the contractual agreements. The owners have a right to inspect and audit the records of program manager pertaining to the operational safety of the program and regulatory compliance. Enforcement of violations of the regulations could penalize the fractional owner, the program manager, or both, depending on the nature of the violation.

Based on the comments, the FAA amended the operational control sections to clarify operational control responsibilities and delegation of task performance. See the discussion below under §§ 91.1003 and 91.1009–91.1013.

Aircraft Dispatchers

The Airline Dispatchers Federation (ADF), Teamsters, and at least 30 individual dispatchers state that a full aircraft dispatching system, as required under part 121, is needed to ensure adequate operational control.

One individual commenter states that Executive Jet, the ''founder'' firm of fractional ownership, has, in the interest of the highest level of safety, instituted a dispatch and flight following system. This commenter included a list of operational control considerations (for example continuing weather evaluation, appropriate aircraft performance computations) that warrant requiring a qualified dispatcher.

ADF believes that the NPRM's greatest fault concerns operational control, defined by the FAA as the authority over initiating, conducting, and terminating a flight. Although many years of operating experience has shown that the safest aviation operations utilize positive operational control through the joint responsibility of the Aircraft Dispatcher and Pilot-in-Command (PIC), this NPRM does not require this type of operational control. As an example, perhaps one of the most important Federal Aviation Regulations governing airline operations is § 121.601(c), which requires the aircraft dispatcher, during flight, to provide the PIC any additional information that may affect the safety of the flight. This NPRM does not require this in-flight monitoring/communication for Fractional Operators.

NBAA opposes the mandatory use of FAA-certified dispatchers for fractional aircraft ownership programs. NATA states that commenters who recommend aircraft dispatchers in fractional ownership programs are not considering the safety record of these programs or the burden dispatcher requirements would place on small businesses entering the market.

According to Alpha Flying, Inc., dispatcher certification would be an unfair burden on fractional programs which already would be required to comply with requirements far beyond existing part 91 and even some part 119/135 requirements. The FAA dispatcher exam also bears no relevance to today's business and private aircraft management practices, especially those of fractional ownership. It should be noted here, again, that the practices of existing fractional ownership programs have led to the best safety record of any segment of aviation.

FAA Response: The FAA agrees with the commenters that aircraft dispatchers provide benefits with respect to safety and efficiency. The FAA also supports the use of aircraft dispatchers in fractional ownership programs as a program option and safety benefit. However, the final rule does not apply a mandatory requirement for certificated aircraft dispatchers in subpart K. Certificated aircraft dispatchers and dispatch systems are currently required for part 121 domestic and flag operations. They are not required for any operation under part 91, part 135, or for supplemental operations under part 121.

The final rule requires a flight locating system in § 91.1029 of subpart K, comparable to that required in § 135.79. Section 91.1029 further requires a system for scheduling and releasing program aircraft. The size and complexity of the operation will dictate the level of sophistication and adequacy of the system. In addition § 91.1049(e) requires that the program manager ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations. The FAA recognizes that some companies have employed certificated aircraft dispatchers to accomplish these duties, however the final rule allows the flexibility for the program manager to determine the qualification of the scheduling or release personnel as appropriate to the aircraft, size and complexity of the operation, and the geographical area served. In all cases the program must provide adequate procedures for locating each flight, if a flight plan is not filed.

Night Currency (§§ 61.57 and 135.247)

Seven commenters (two individuals, NBAA, NATA, Flexjet, Kaiser Air Inc., and General Motors Air Transportation Section (GM)) that address the proposed changes to these sections generally support the proposed changes. Kaiser questions whether the words ''requires more than one pilot'' relates to type design requirements or operating rule requirements. An individual commenter suggests that the ''preceding six months'' requirement be changed to ''seven months'' to cover the possibility that a pilot might, under § 135.297, take a check ride one grace month early and the following check ride one grace month late.

FAA Response: In response to operator safety concerns, the FAA amended § 61.57(e) on April 30, 1999, to provide an alternate means of compliance for meeting FAA's night currency requirement. This alternative allows operators to maintain currency by using both the aircraft and part 142 approved training programs.

The applicability of the alternative is unclear, however, because in order to qualify for the alternate means of compliance, a pilot must ''operate more than one type of aircraft.'' Under this definition, operators are uncertain how to determine if a pilot ''operates'' more than one type of aircraft.

The change to § 61.57(e) in this final rule clarifies the existing alternative and provides a second alternate means of compliance for pilots of turbine-powered aircraft that require more than one pilot and that meet additional experience requirements. The first alternative allows pilots to maintain night currency through the performance of three takeoffs and landings to a full stop over a 6-month period. The second alternative allows pilots to maintain night currency through the performance of 6 takeoffs and landings to a full stop in a simulator training program approved under part 142 of this chapter. The FAA believes these alternatives provide an equivalent level of safety for night flying operations and that because of the similar nature of operations and aircraft used, pilots used for on-demand part 135 operations also should be allowed to maintain night recency of experience using this alternate means of compliance.

In response to the question about the meaning of ''requires more than one pilot,'' the FAA has changed the final rule to clarify that the requirements of §§ 61.57(e)(3) and 135.247(a)(3) apply to airplanes that are *type certificated* for more than one pilot crewmember and to pilots qualifying in each airplane *type.*

The FAA has not changed the time frame for the ''preceding six month'' requirement to ''preceding seven months'' because the grace period requirement (§ 135.301(a)) does not apply to requirements tied to a preceding number of months.

Security

NBAA, AOPA and several individual pilots point out that while FOARC and therefore the NPRM did not address security issues, this rule should make recommendations concerning potential security measures that might be adopted in the wake of September 11, 2001. NBAA recommends caution and restraint in the deployment of new security regulations. AOPA recommends that any new security mandates for part 135 on-demand charter operations apply to operations covered under proposed subpart K.

With the focus on safeguarding commercial carriers, many experts believe that private charter and corporate aircraft are now more vulnerable than ever at small airports that have virtually no security. Small airports lack measures like security fences, lights or guards; there is no security to guard parked planes; small planes could be stolen and loaded with dangerous chemicals; small planes can also skim treetops and avoid radar detection. Yet the FAA wants to increase business operations at small airports with these new rule changes. Several other commenters also raise the security issue.

NATA does not think that this rulemaking is the appropriate situation for discussing security issues. According to the commenter, there needs to be an industry-wide, comprehensive examination of security issues.

FAA Response: No new security requirements were proposed in the NPRM and no security requirements have been added to the final rule, because that would be outside the scope of this rulemaking. However, the FAA is working with the Transportation Security Administration, aviation associations, and airports to improve security procedures for general aviation and in the areas of airports that serve general aviation. Any new security requirements that would apply to fractional ownership programs would be issued by the Transportation Security Administration.

International Operations

NATA and Flexjet describe a problem concerning international operations under fractional ownership when there has been a change in ownership requiring changes in aircraft registration. Because current rules prohibit operations outside the United States under a ''pink slip'' (temporary registration), these commenters recommend that a more formal temporary registration system be established that would allow international flight. This system could use aircraft registration designees who could function in a manner similar to Designated International Representatives and Designated Examiners.

FAA Response: The FAA does not agree that the registration function of the Aircraft Registry in Oklahoma City can be delegated to non-governmental persons as is done in other areas. International law forbids the operation of an aircraft outside the U.S. without an official registration certificate, so a temporary certificate would not be acceptable. Fractional owners who wish to travel outside the U.S. must be aware of this obligation and ensure that the aircraft being used for such a flight is properly registered. There are private businesses located in Oklahoma City that assist those who need to obtain a new aircraft certificate because of a change in ownership. These services are often used when there are changes in ownership of aircraft operated by part 119 certificate holders.

FAA: Voluntary Disclosure Reporting Program

NATA and Flexjet recommend that the FAA amend AC No. 00–58 to clarify that the FAA's voluntary disclosure program ''applies to fractional ownership program managers to the same extent that it applies to certificate holders, indirect air carriers, foreign air carriers, and production approval holders.''

FAA Response: The FAA is considering changes to Advisory Circular 00–58, but any revision will not occur until after the publication of this final rule. This topic will also be addressed in the fractional ownership implementation planning.

Illegal Commercial Use

Marc Fruchter Aviation states that an issue not adequately addressed by the NPRM is the issue of share owners using their shares to provide illegal commercial aircraft travel for others. Fruchter Aviation suggests two additions to the rule language to address this problem. First, all solicitations for share purchases should be mandated to contain exact definitions of and explicit warnings about the legal and economic consequences of illegal commercial use of fractional share flights and the possibility of a forfeiture of insurance coverage should be detailed as well. Second, the rules should be strengthened to spell out penalties against the share owner and fractional provider should this activity occur. Significant penalties against both entities would go far to deter this practice.

FAA Response: The FAA agrees there is a potential for illegal commercial use of aircraft being operated under fractional ownership programs. Section 91.1005 addresses this issue. In the final rule we have retitled the section from ''Owner's use of program aircraft'' to ''Prohibitions and limitations'' and amended the text to more clearly state that a fractional owner may not use a

program aircraft to provide transportation to others for compensation or hire. In addition, we have added a new paragraph (c) to § 91.1005 addressing the sale or sublease of an aircraft interest by either a program manager or fractional owner. This paragraph would make it clear that if the sale or sublease of an aircraft interest would result in less than the minimum aircraft interest prescribed in § 91.1001(b)(10), then subpart K does not apply. Flights conducted for associated reduced share sizes are required to be conducted under part 121 or part 135, as appropriate, by a part 119 certificate holder.

Further, the FAA added a new paragraph (c) to § 91.1001 to clarify that the rules of subpart K apply to persons who engage in programs meeting the new definitions of this subpart without first obtaining management specifications under subpart K.

Any penalties for non-compliance with this rule and all other FAA rules are explained in 14 CFR part 13, subpart C, Legal Enforcement Actions. In addition, we note that any unlawful commercial operations may also be subject to enforcement action by the Office of the Secretary for violations associated with its economic licensing requirements. (*See* 49 U.S.C. 46101 and 46301.) Further, § 91.1013 requires each owner to sign an acknowledgment of the fractional owner's operational control responsibilities, including compliance with management specifications and applicable regulations and penalties for non-compliance.

Over-water Operations (§§ 91.509 and 135.167)

Several comments were received on the proposal to revise part 91 and part 135 equipment requirements for over-water operations.

NATA, Flexjet, and a flight operations manager state that they support the revision because the proven reliability of turbine engines shows that there would be no compromise of safety.

Columbia Helicopters supports the provisions for part 91 because of the altitude requirement, but not for part 135. According to the commenter, the current part 135 provisions are for ''extended over-water operations,'' which is defined in 14 CFR part 1. (The definition in part 1 for ''extended over-water operations'' for aircraft other than helicopters is more than 50 nautical miles from the nearest shoreline; for helicopters it is more than 50 nautical miles from the nearest shoreline or from an offshore heliport structure.) The commenter states that the revision would make an exception to the part 1 definition and that such an exception should be done by exemption. The commenter believes that the change will jeopardize lives because any survivors of a ditching would have no means of surviving in the water until they are rescued.

Two commenters support the amendments, but want stipulations or clarifications based on the type of engine. One of these commenters would change ''turbine-powered aircraft'' to ''turbine-powered multiengine aircraft.'' Since there are pressurized single engine turbine-powered aircraft in fractional programs, the commenter hopes that FOARC and the FAA did not intend to allow single engine turbine-powered aircraft to operate without appropriate survival equipment. An engine failure above flight level (FL) 250 in a multiengine turbine-powered aircraft yields a very different result than in a single engine aircraft. This commenter believes that allowing the exception for single engine turbine-powered aircraft would not provide an appropriate level of safety.

Four commenters oppose both amendments for safety reasons. Two of these commenters, an individual and an EJA Pilot, state that the recent case where an Airbus A330 had a dual engine flameout over the Atlantic Ocean because of fuel problems is a perfect example why this equipment should be on every over-water aircraft.

An EJA Pilot, one of the opposing commenters, states that it would decrease safety to allow flights beyond 50 nautical miles or 30 minutes flight time (whichever is greater), before requiring safety devices. This commenter recommends the FAA require over-water survival equipment for all flights beyond 50 nautical miles from the shoreline.

NATA points out that the proposed rule does not revise the current requirement to carry a life preserver for each occupant.

Two individual commenters believe that 30 minutes over water without safety equipment is too much time. If the plane was on fire or had other reasons for an immediate landing, the lack of a life raft could be fatal. With the addition of ''whichever is greater,'' jet aircraft traveling in excess of 500 knots could be 250 nautical miles or greater out to sea. This exceeds the distance that rapid response search and rescue helicopters or rescue equipment could realistically be expected to deploy for search and rescue efforts. One of these commenters also states that the limit should be the same for all operators/types of operations.

The Teamsters state that the unstated reason for amending part 135 is to let part 135 charter operators ''compete'' with the fractional providers. Part 135 operators have traditionally been held to a higher standard of safety than a private aircraft operator. According to this commenter, the reduction in safety from the change in part 135 is solely to reach a deal with charter industry groups. The commenter states that no data support any changes to § 135.167.

PASS does not see a reason for having these special rules regarding aircraft under subpart K. This commenter believes that the part 91 rules that are in effect should stand; however, if the rule needs to be changed, then the entire rule should be changed, not just the part that applies to subpart K.

Kaiser Air, Inc. strongly supports the change to § 135.167(d) but notes that the rule does not contain the statement in the proposed rule preamble that a deviation below 25,000 feet is allowed in the interest of safety.

FAA Response: The FAA agrees with the safety concerns of these commenters. In the final rule, the FAA has included language in §§ 91.509(c) and 135.167(a) similar to that in § 121.339 that allows the FAA to amend management specifications or operations specifications, as applicable, to require the carriage of any or all over-water emergency equipment or to allow a fractional ownership program or on-demand operation to request a deviation for a particular over water operation. Commenters are correct that only turbine-powered multi-engine airplanes would qualify. The proposed rule was not intended to apply to helicopters; the use of the word ''aircraft'' instead of ''airplane'' in the proposed rule was in error. The specific airplane types for which an operator requests exception would need to have a reliability program under which the operator is able to demonstrate and ensure the reliability of the airplane engines. Other conditions and limitations would be imposed on the operator to ensure that safety and survivability are maintained. The FAA will develop guidance for fractional ownership programs and part 135 operations based on the guidance for part 121 operations in the Air Transportation Operations Inspectors Handbook (Order 8400.10, Volume 3, Paragraph 87).

In addition, the FAA has researched the relevant regulatory provisions and has reviewed relevant rules applicable to current air carrier operations. This research reveals that the ''whichever is more'' language is inconsistent with the FAA's past interpretation of the relevant regulations. Therefore, the final rule

includes the words ''whichever is less'' in § 91.509(b) to clarify that under the current rule the phrase ''within 30 minutes flying time or 100 nautical miles'' means whichever is the closest to shore.

In response to the comment about deviations in the interest of safety, it is not necessary to include that language in this rule because § 91.3(b) allows a pilot to deviate from any FAA rule to the extent required to meet an in-flight emergency requiring immediate action.

IFR Takeoff, Approach and Landing Minimums (§§ 91.1039 and 135.225)

NATA and Flexjet fully support the proposed alternative means of complying with the destination airport weather reporting facility requirements under part 135 and the proposal to apply the same requirements and alternatives in part 91, subpart K.

The Teamsters, a fractional pilot, and an individual question the safety of allowing operations into airports that do not have on-site weather reporting facilities. These commenters believe that this proposed change would reduce the level of safety now provided by § 135.225 and establish an inadequate level of safety for fractional owner operations.

A flight operations manager states that as proposed, every time a part 135 or fractional program flight was to depart for an airport without weather reporting, an alternate airport must be designated regardless of the current or forecast weather. The commenter states that this in many cases would require an aircraft to make unnecessary fuel stops to assume instrument flight rules (IFR) fuel reserves even if the weather were VMC (visual meteorological conditions). The commenter suggests specific language that in effect would tie the requirement more specifically to the forecast weather at a facility within 25 NM of the destination airport.

Kaiser Air questions the practicality of a PIC's ensuring that the required ''visibility is maintainable for the entire length of the runway'' as is required by proposed § 91.1039(e). This commenter also states that § 135.225(h) should state specifically what sections in part 91 are being referenced. Furthermore, Kaiser Air states that there is no apparent change to part 135 that specifically gives a level playing field with part 91 subpart K regarding take-off minimums found in § 91.1039(d) and (e). Kaiser believes part 135 should get relief for take-off minimums.

FAA Response: The FAA disagrees with commenters that question the safety of operations into airports without weather reporting facilities. Fractional ownership operations currently have no weather reporting requirements at the destination airport. This final rule provides a safety benefit by requiring weather reporting at the destination airport or requiring that an alternate airport with weather reporting be designated. Also a current local altimeter setting must be available for both airports.

Current § 135.225(a) prohibits initiation of an instrument approach at a destination airport unless that airport has a weather reporting facility on the field. The final rule provides an alternative means of compliance for eligible part 135 on-demand operators to initiate an instrument approach at a destination airport that does not have weather reporting facilities. The on-demand operator must designate an alternate airport with weather reporting facilities, have a current local altimeter setting for both airports, and meet additional crew qualification and pairing requirements.

The FAA believes that technologies and aviation weather services have improved and been implemented to support this alternative. Further, this provides a safety benefit by allowing an operator to plan and conduct a stabilized instrument approach to an airport.

The FAA disagrees with the commenter who states that an alternate airport must be designated regardless of current or forecast weather, and that operators would need to carry additional fuel, even if the weather was VMC. This final rule provides an alternative means to enable an operator to plan and conduct a flight under IFR to a destination airport that does not have weather reporting and to initiate and conduct an instrument approach at that airport. It does not prohibit an operator from conducting a flight to that airport under VFR. Designation of an alternate airport is not required if the approach can be conducted under VFR. Section 135.213 allows the pilot to make a determination of weather conditions for operations under VFR, based on the pilot's own observations.

The FAA agrees in part with Kaiser Air on the practicality of having the pilot determine, as provided in § 91.1039(e), that the ''visibility is maintained for the entire length of the runway.'' For low visibility operations there may be additional criteria, such as runway lighting or markings, required for these operations. The FAA has amended the regulatory language to impose a takeoff limit of 600 feet for fractional ownership program operations, without specifying the method for determining the visibility. Management specifications and other guidance will provide the weather reporting requirements and other criteria for determining visibility in conducting takeoffs in these conditions.

Kaiser Air is correct that a change in takeoff minimums for part 135 operations was not proposed. Since this was not proposed in the NPRM, a change to part 135 takeoff minimums and weather reporting requirements for takeoff is beyond the scope of this rulemaking.

Drug and Alcohol Testing Programs (§§ 91.1047, 135.251 and 135.255)

PASS, NWJ, Aviation Charter Services, and an individual believe that § 91.1047 individuals need to be on an FAA approved drug program (which includes testing), not just receive drug education training. PASS states that the testing and training should be documented and that a current list would be made available to the Administrator. NWJ and the individual state that not requiring a Federally mandated testing program will result in inconsistencies and a lack of standardization among fractional operations, as well as among the maintenance vendors that support them. These commenters believe that § 91.1047(c)(3) does not provide enough clarification or consistency to properly enforce the spirit of the proposed regulation.

NWJ and the individual commenter praise FOARC and the FAA for providing part 135 operators with relief from drug and alcohol testing under the provisions of §§ 135.251(c) and 135.255(c).

Two other commenters object to the proposed relaxation for emergency maintenance situations under part 135. One of the commenters states that allowing for the use of maintenance personnel not currently covered by a DOT drug and alcohol program to perform ''emergency maintenance'' on fractional aircraft when there are no available maintenance personnel could be open to interpretation by the FAA and could lead an operator down the wrong path.

PASS believes that there should be a procedure to re-inspect an aircraft at its next destination after emergency maintenance has been performed and that passengers should not be carried on-board the aircraft until the emergency maintenance has been inspected by a qualified mechanic.

EJA and Flexjet suggest changing ''program'' in the title of § 91.1047 to ''education'' to avoid confusion because ''program'' was used in the title of the

section but ''education'' appears within the section.

FAA Response: By statute, the FAA is obligated to impose the drug and alcohol testing programs on air carriers. The requirements are located in appendices I and J of part 121 and apply to air carriers under parts 121 and 135. No such statutory obligation exists for part 91 operations. Therefore, although the FAA encourages fractional ownership programs and other corporate aviation organizations to consider establishing drug and alcohol testing programs, those programs would be separate and apart from the Federally mandated testing programs. In that regard, the company testing programs may not use the forms that are required for the Federally mandated testing programs to document their testing. These forms are the Federal Drug Testing Custody and Control Form and the U.S. Department of Transportation (DOT) Alcohol Testing Form. Drug and alcohol testing programs that are not part of the Federally mandated systems must develop their own forms.

In any case, with or without a drug and alcohol testing program, all pilots must comply with § 91.17, which prohibits a person from acting or attempting to act as a crewmember of an aircraft while under the influence of drugs or alcohol.

The relief provided to part 135 operations under §§ 135.251(c) and 135.255(c) is based on a practical consideration. There have been times when it has been difficult to locate maintenance personnel who are covered by a DOT drug and alcohol program. However, the FAA agrees with PASS that there should be a follow-up inspection of any emergency maintenance performed under the authority of these sections. The FAA has determined that the appropriate timing for this inspection should be the next time the aircraft is at a location where a person who is qualified under §§ 135.251(c) and 135.255(c) is available. Sections 91.1047(d), 135.251(c), and 135.255(c) have been changed in the final rule to require the reinspection.

Certificate and Management Specifications Action (§ 13.19)

The six commenters (an individual, a flight operations manager, New World Jet/EJA, NATA, and Flexjet) who address this proposed section agree that holders of management specifications should have appeal rights comparable to those available to certificate holders under current § 13.19. Several commenters state that FAA should seek legislative authority if necessary.

FAA Response: The FAA has determined that legislative authority is needed to provide appeal rights for fractional ownership program managers. Therefore, the proposed changes to § 13.19 have not been included in the final rule, pending receipt of such authority.

Part 91, Subpart A, Truth-in-Leasing Clause

NATA and Flexjet state that proposed §§ 91.1009, 91.1011, 91.1013, 91.1014 and 91.1015(a)(1) would make compliance with § 91.23 duplicative and unduly burdensome for program managers and fractional owners. Since § 91.23 already exempts leases of aircraft to a certificate holder under part 121, 125, 135 or 141, NATA recommends amending § 91.23(b) to add an exception for leases under a fractional ownership program.

FAA Response: The FAA disagrees that §§ 91.1009 through 91.1015 adequately address the same content that is specified in § 91.23. Therefore, the FAA is not amending § 91.23 to except fractional ownership programs.

Part 91, Subpart F

PASS believes that there should be specific delineations about the use of subpart K aircraft in part 121 or 135 programs. PASS expands on this statement in its comment on proposed §§ 91.1009(b)(2) and 91.1035(c) where it states its belief that fractional aircraft should not be used for operating under parts 121 and 135. PASS states that the ''only way for FAA to effectively and efficiently provide clear guidance and oversight is by ensuring separate rules for each type of operation.''

FAA Response: It is not a unique situation for aircraft at different times to be operated under different rules. Currently, an aircraft can serve multiple operational uses, including flight instruction, aircraft rental, or air carrier operations. In all cases each operation must be conducted in accordance with the rules applicable to that operation. Therefore an aircraft that is used in a fractional ownership program under subpart K could also be used by a part 119 certificate holder in an air carrier operation provided the operator or owner meets the regulatory requirements for that operation.

The final rule includes a clarifying change in § 91.501(b)(10). The change makes it clearer that a fractional owner may not use a joint ownership arrangement specified in § 91.501(b)(6) and that, if entering into an interchange agreement under paragraph (b)(6), the exchange of equal time for the operation must be properly accounted for as part of the total hours associated with the fractional owner's share of ownership. A joint ownership arrangement is incompatible with the definitional elements of a fractional ownership program prescribed in § 91.1001(b)(5). An interchange arrangement is permissible provided the fractional ownership program contracts permit a fractional owner to enter into an interchange agreement with a party outside the fractional ownership program.

Part 91, Subpart K

Section 91.1001 Applicability

Citizenship

One individual commenter questions the constitutionality of not requiring a fractional owner to be a citizen as required by § 119.33 for people certificated under part 119.

FAA Response: FAA regulations and aviation law make a distinction between the citizenship requirements for registered owners of aircraft versus certificated air carriers or commercial operators. Part 119 requires that applicants for certificates to operate under part 121 or 135 must be U.S. citizens. It is the FAA's determination in this rule that a fractional ownership program is not an air carrier or commercial operation and that the program manager is not an operator subject to part 119. Therefore the citizenship requirements of part 119 do not apply to these programs or to the program manager.

For aircraft owners, part 47 contains the requirements on citizenship for registration purposes. A foreign citizen may be an owner of a U.S. registered aircraft if he or she is a resident alien. Section 47.9 contains specific rules for corporations that are not U.S. citizens. As long as they comply with the part 47 rules, fractional owners may be foreign citizens.

Two Pilot Crews

GAMA states that when the FOARC was considering this NPRM, aircraft certificated under part 23 were not part of fractional ownership programs (as defined by the NPRM). However, safe and efficient operations of part 23 aircraft are feasible under fractional programs, and FAA should make allowances for them to operate under the proposed part 91, subpart K. However, part 23 aircraft, including some turbofans, are typically certificated to fly safely with a single pilot. GAMA therefore recommends that two pilots should not be required for part 23 aircraft to qualify for part 91, subpart K operations.

FAA Response: With respect to aircraft certificated under part 23, FAA believes that the deviation authority provided in § 91.1049 is adequate to cover situations where a two-pilot crew is not necessary.

Management Specifications

NATA and Flexjet state their belief that the FOARC intended that all fractional programs would be required to operate under part 91, subpart K, unless they elect to obtain certification under part 119. The commenters' concern is that the proposed rule language would not cover a person who is actually operating as a fractional owner but who does not apply for management specifications. The commenters recommend the addition of a new § 91.1002 that would contain language clearly stating that the rules of subpart K apply ''to a person who engages in any operation governed by this subpart without appropriate management specifications.''

FAA Response: FAA agrees with NATA and Flexjet that the intent of the NPRM was for all persons conducting fractional ownership operations to be subject to subpart K unless they elect to obtain certification under part 119. Therefore, a new paragraph (c) has been added to § 91.1001 to make it clear that the subpart applies to any person who engages in a fractional ownership operation as described and defined in § 91.1001.

Program Manager

NWJ and an individual believe that under § 91.1001(b)(8) an individual or individuals should be specifically designated for accountability within the fractional operator's management specifications, not just the entity. This would be similar to the part 119 requirements for required personnel that apply to on-demand part 135 operations. The commenters believe that, at a minimum, an individual designated as ''Program Manager'', ''Director of Operations'', and ''Director of Maintenance'' should be required positions within the fractional operators' management specifications. PASS also believes that it will be necessary to identify a Director of Maintenance (DOM), with qualifications determined by the Administrator that are based on the size, scope and complexity of the fractional ownership program. The DOM would be the focal point for all correspondence and questions between the FSDO and the program management company concerning maintenance related issues.

FAA Response: The FAA recognizes a need for management personnel and individuals designated for accountability within a program. Instead of designating specific positions, program managers will be asked to identify individuals that the FAA can contact on specific issues, such as operations and maintenance, and who are authorized to sign the management specifications. However, if a fractional ownership program manager elects to maintain program aircraft using a continuous airworthiness maintenance program (CAMP), the position of Director of Maintenance would be required (*See* § 91.1413(b)(1)).

Minimum Fractional Ownership Share

PASS believes that § 91.1001(b)(4) should be changed so that the requirement for 1/16th share minimum ownership includes a monetary cost for the fractional aircraft along with the minimum share requirement. For instance, an aircraft valued at over 2 million dollars could be a 1/16th minimum share but an aircraft under 2 million dollars should be 1/8th share as a minimum. This would help prevent the possibility of a program manager selling many shares of a 1973 Cessna 172 at low cost shares, circumventing the meaning of the fractional ownership program and actually conducting low fee air charter operations without a part 135 air charter operating certificate. Additionally, under the proposed definition a person could purchase a 1/17th share and not be under the umbrella of fractional ownership. PASS does not believe this was the FAA's intent.

Jet Sales & Services, Inc. objects to the proposed concept of ''minimum fractional ownership interest'' when there are many other ways to control an asset in the dynamic U.S. business environment other than ownership, such as exclusive lease arrangements which should be given the same constructive treatment as ownership. Jet Sales states that an on-demand air charter certificate holder can lease aircraft and, in fact, that aircraft may have joint uses such as serving as private and/or corporate aircraft transportation. Also, scheduled airlines lease aircraft as well as other assets. Jet Sales believes that lease arrangements must be allowed in fractional programs.

Aviation Charter Services expresses concern that subleasing arrangements by a share owner would violate the 1/16th requirement and that if subleasing of a share is allowed, the person subleasing should have to hold an operating certificate and follow part 135 regulations.

EJA believes that the final rule should clarify the regulatory ramifications of a fractional ownership interest not meeting the minimum requirement of an interest equal to, or greater than, one-sixteenth of a subsonic, fixed-wing aircraft or one-thirty-second of a rotorcraft aircraft. EJA suggests that the final rule should specify that any system of aircraft exchange which meets the definition of ''fractional ownership program'' in all respects except that one or more of the fractional owners possess less than a ''minimum fractional ownership interest'' will be required to conduct program operations for such owners under appropriate air carrier regulations rather than under subpart K.

FAA Response: The FAA has determined that the minimum share requirement is adequate to define an ownership interest and the addition of a monetary cost does not add any value.

In response to the comments about lease arrangements, the FAA considers a long-term lease to be equivalent to an ownership interest. Therefore, leasing is allowed under subpart K. Any lease or sublease arrangement may not be smaller than the minimum 1/16th share requirement.

The FAA agrees with the suggestion by EJA that the regulation should explain the ramifications of a fractional operation not meeting the minimum interest requirements. The regulation has been modified to add § 91.1005(c) to make it clear that fractional ownership programs with more than 16 owners per aircraft, including sublease shares that result in an ownership interest smaller than 1/16th, must be operated by a part 119 certificate holder under part 135 or 121, as applicable.

Two or More Aircraft

NATA and Flexjet support the requirement for two or more airworthy aircraft as an essential element of a fractional ownership program. However, a bona fide fractional aircraft program, especially a new entrant, might only have two aircraft in the program. While this satisfies the requirement of the rule, there may be times when one of the program aircraft is temporarily unairworthy because of mechanical failure or required maintenance or inspection. Such brief and routine occurrences should not affect the ability of the program to continue to operate under subpart K. NATA and Flexjet recommend that the FAA make this clear in the Final Rule.

FAA Response: The FAA does not believe that a rule change is necessary since this kind of intermittent occurrence is in the course of normal business and would not be considered a violation of the two airworthy aircraft requirement. It is expected that an

aircraft would be temporarily out of service for maintenance or repair. Further, because of aircraft sales or other factors, there may be short periods when the two aircraft requirement cannot be met. A key element of a fractional ownership program is the dry lease exchange provision that will mandate that two or more aircraft be available in the long term.

Dry Leasing

An individual states that § 91.1002(b)(2) and (b)(7), discussing dry lease requirements without crew members and fractional ownership program management services requirements to provide aircraft, crews, maintenance, crew training and record keeping, are hard to understand and appear to be in conflict with each other.

FAA Response: The arrangements described in § 91.1001(b)(2) and (b)(7) ((b)(8) in final rule) are distinct and different, but they are not in conflict with each other. The dry lease arrangement described in § 91.1001(b)(2) is an agreement among fractional owners that allows them to use aircraft owned by other fractional owners within the same program. The dry lease exchange provision facilitates the use of the owners' aircraft. The program manager does not provide the aircraft, rather the program manager's role is to schedule the aircraft from within the dry lease exchange pool and to provide other aviation expertise and services to the owners, as described in renumbered paragraph (b)(8).

Affiliate Fractional Ownership Program

PASS believes that an affiliate fractional ownership program, as provided in § 91.1001(b)(6)(ii), should not be allowed because there would not be effective controls for FAA oversight and surveillance. FAA inspectors could not schedule inspections and surveillance efficiently. Additionally, PASS believes it would be very confusing in determining operational control of program aircraft between affiliate program management companies.

NATA and Flexjet believe that the decision about whether program managers are affiliated should be made once at the time of initial FAA approval of a program (or at the time a new program is started by an affiliated manager) at the national level by a headquarters-based FAA official who has developed an expertise in an area and who can make uniform decisions in the matter. Once the determination is made at the national level, the program management specifications should include a reference to any affiliated program managers and there should be no revisiting of the issue without good cause.

The Teamsters disagree with the proposal to allow ''affiliates'' to be part of the ''interchange agreement'' where an individual who purchases a share of an aircraft operated by a specific program manager can now be ''sold off'' to an affiliate while maintaining the same rights and benefits as if he was in the original program manager's operation. The commenter believes that there is no guarantee of proportional and equal aircraft use between owners, or that an affiliate aircraft is even a fractionally owned aircraft. In response to the FAA's request for comments on this issue, the Teamsters state that this concept would not ensure that owners have legal possession, custody, and use of an affiliate aircraft. The Teamsters believe that, under the proposal, if a part 135 on-demand charter company became an affiliate, it would not have to comply with part 135 regulations when chartering out one of its aircraft to a fractional owner.

FAA Response: For an affiliate relationship to exist, the parties must be part of the same umbrella company and the relationship would have to be identified in the management specifications. The 40 percent holding of equity and voting power is presumed to be an adequate controlling interest to define an affiliate. Any affiliates will be identified in the management specifications and will be referenced in contractual and lease documents among the owners and the program manager. These management specifications and guidance are reviewed by FAA national and regional headquarters.

The comment that an on-demand operation under part 135 could become an affiliate to circumvent the part 135 requirements and operate under subpart K is not a correct assumption. An affiliate represents a business or corporate organizational structure and does not define the operational requirements. Each affiliate program will need to be reviewed on a case by case basis to determine if it meets the applicability of this subpart.

Program Manual

EJA comments that proposed § 91.1001(b)(7)(v) defines the provision of fractional ownership program management services to include the development and use of a maintenance program manual. There is no other mention of this manual in the NPRM. Proposed §§ 91.1023 and 91.1025 require only a written program operating manual. Since maintenance manuals are not required under part 135 for aircraft with less than 10 seats, EJA believes it is unlikely that the FAA intends for part 91, subpart K to require maintenance manuals for all aircraft.

FAA Response: The FAA agrees with the EJA comment, and has deleted the reference to a maintenance manual.

Section 91.1003 Management Contract Between Owner and Program Manager

EJA suggests clarifying language for paragraphs (b) and (c) of this section that would replace the phrase ''program log books and maintenance records'' with the phrase ''log books and maintenance records maintained by the program manager.''

Flexjet recommends deletion of either paragraph (b) or (c) of this section because they are duplicative.

NBAA recommends that paragraph (d) of this section be deleted because this commenter believes that the ''FAA must retain full, unrestricted access to every aircraft owner of U.S.-registered aircraft, regardless of contractual arrangements designed for efficiency * * *'' At the same time, NBAA recommends that ''in the development of inspector guidance and additional preamble mentioned, that the FAA, under ordinary circumstances but at its sole discretion, communicate primarily with the fractional program manager on issues related to program aircraft.''

FAA Response: The FAA agrees with this suggestion that the phrase ''program log books and maintenance records'' should be replaced with the phrase ''log books and maintenance records maintained by the program manager.'' This change appears in the final rule language. In addition the FAA has combined paragraphs (b) and (c) into one paragraph (b) that addresses both the right to inspect and the right to audit. The FAA has also removed the word ''solely'' from proposed paragraph (d) and has redesignated the paragraph as paragraph (c). Also, to clarify the FAA's relationship with the fractional owner, a new paragraph (d) has been added to state that the contract must acknowledge the FAA's right to contact the owner directly, should it choose to do so.

Section 91.1007 Advance Notice of Non-Program Aircraft Substitutions

Several commenters state concern with the proposed language of this section, which states that the program manager ''shall make an effort to notify a fractional owner prior to the flight when a non-program aircraft is substituted for a program aircraft for the use of the fractional owner.''

EJA states that the rule should be revised to make clear, as does the NPRM

preamble, that when a non-program aircraft is substituted, it must be operated by a certificate holder with the appropriate authority. EJA also suggests that the final rule should clarify that a program manager may elect to conduct a particular fractional ownership program flight for a fractional owner under part 121 or 135, assuming that the program manager is properly certificated to undertake those operations under those parts of the regulations.

PASS believes that if non-program aircraft are to be used, they should be identified in the contract and that a list of non-program aircraft should be provided to each fractional owner and to the Administrator.

The Teamsters and an individual believe that the program manager should be required to do more than just ''make an effort'' to notify the fractional owner.

A pilot in a fractional ownership program states that customer notification of sell-offs ''when possible'' clearly highlights that fractional companies need to change operational aspects of the flight to the extent that safety is compromised. Large problems occur in communication with crew and passengers. There have been continual problems where aspects of flights have been changed and either/both crew and passengers were not notified. This commenter believes customer sell-offs will compromise the safety and security of flight operations regarding many aspects of 14 CFR 61/135/l21.

FAA Response: The FAA agrees with the commenters that the proposed § 91.1007 was not sufficiently clear. In addition, we question the practicality of the term ''make an effort to notify'' the fractional owner prior to the flight. However, we agree there must be a method for parties to know who is in operational control of that flight. Procedures and notification of aircraft substitution should be discussed as part of the contract between the program manager and the owner. This is done to ensure the owner knows that some flights may be conducted by an air carrier, that there is a clear understanding of who is in operational control of each flight, and to track program flight hours.

In the final rule, the section title has been changed and the section has been revised. The text of paragraph (a) has been revised to state that ''Except as provided in § 91.501(b), when a non-program aircraft is used to substitute for a program flight, the non-program aircraft must be operated in compliance with part 121 or part 135.'' The phrase ''shall make an effort'' has been removed and the revised language makes clear that when a non-program aircraft is substituted, it must be operated by a certificate holder with the appropriate authority.

New paragraph (b) makes it clear that a program manager may conduct a flight under part 121 or 135, either at his own election or at the request of a fractional owner, only if the program manager holds a part 119 certificate authorizing those operations. In this case a program manager is no longer acting as a program manager, but instead is a certificate holder who is in operational control of that flight. A fractional owner's aircraft could be used in an operation under part 121 or 135, if it is dry leased to a part 119 certificate holder and authorized in that certificate holder's operations specifications. That certificate holder must conduct the operation under the operating rules of part 121 or 135, as appropriate.

New paragraph (c) was added to ensure that a fractional owner is informed whether a flight is being conducted as a program flight or is being conducted under part 121 or part 135 of this chapter. The method and timing of such notification is to be determined between the program manager and fractional owners. Further, § 91.1027(e) requires that the program manager provide a written document to be carried on each flight stating who is in operational control of that flight and under which FAA regulations the flight is being conducted. That paragraph specifies that the document must be carried on board to the flight's destination and includes record retention requirements.

The FAA does not agree with the suggestion by PASS that if non-program aircraft are to be used, they should be identified in the contract and that a list of non-program aircraft should be provided to each fractional owner and to the Administrator. The FAA believes that this kind of scenario would be unworkable and unnecessary. However, the contract should make clear that when a program aircraft is not available, a non-program aircraft will be provided that will be operated under part 121 or 135.

Sections 91.1009, 91.1011 Clarification of When Owner Is in Operational Control and Implications of Owner Being in Operational Control

PASS believes that lines of operational control need to be made clear. The safety of the aircraft lies directly with the program manager for FAA compliance. PASS states that the owner should never be in operational control; this should remain with the Program Manager.

FAA Response: The FAA believes that the rule language does make clear the lines of operational control. When an aircraft is operated under subpart K on a program flight, the fractional owner for whom the operation is being conducted is in operational control and is responsible for compliance with all applicable regulations. The fact that the fractional owner has delegated certain tasks to the program manager does not relieve the fractional owner of responsibility, similar to situations where aircraft owners contract for maintenance and other required services.

Section 91.1013 Owner's Understanding and Acknowledgment of Operational Control Responsibilities

PASS and the Teamsters believe that the reality that fractional owners are nothing but passengers on their aircraft needs to be recognized. Fractional owners have no decision-making responsibility in the actual operation of the aircraft. The fractional ownership program manager needs to be held liable for compliance with the FAA regulations for the maintenance, aircrew, training and operation of the fractional aircraft. The degree of operational control is not equal between the fractional owners and the program managers.

An individual recommends that § 91.1013(a)(1)(iii) be stricken from the final rule because it is inappropriate, unnecessary and potentially harmful. The commenter states that the FAA's regulations are an inappropriate means of alerting members of the aviation community to the tort ramifications of their activities and states that the FAA has not done so with respect to others in the aviation community (for example, pilots, mechanics or traditional owners of aircraft).

The commenter states that this provision does not alert fractional owners to anything that has not always been true for all owners of aircraft, fractional or not. Whether a fractional owner is deemed to exercise operational control will likely continue to be based on actual control, independently of the fractional characterization of the arrangement.

The commenter states that another potential consequence of the provision is that it might be misinterpreted by the fractional management company as an indication that it is relieved of its tort duties by virtue of the owner's required acknowledgment of his responsibilities. As urged above, if the fractional arrangement causes a change to the

traditional allocation of tort liability between the owner on the one hand, and the pilot, mechanic, or other independent contractor on the other, that change results only because the owner has in fact chosen to exercise actual control. The management company should not be led to believe that its tort exposure has been diminished by the mere characterization of the arrangement as fractional, or by the owner's acknowledgment of operational control, when the true essence of the relationship is the total entrustment of all operational functions to the management company.

FAA Response: As stated previously, the FAA believes that the idea that each fractional owner will, at times, have operational control of an aircraft being used on his or her behalf is at the heart of the fractional ownership concept. Many of the details of the contractual relationship between a prospective or actual fractional owner and a program manager are not safety related and therefore are not a concern of the FAA. However, the FAA believes that it is important for prospective or actual fractional owners to know and understand the responsibilities they will assume as a fractional owner.

The FAA agrees that this type of requirement has not been imposed on other regulated entities. Because of the unique aspects of the fractional ownership arrangement, the number of the owners, and the varying levels of owner expertise, the FAA believes the implications of operational control, including liability risk and enforcement actions, must be clearly expressed and acknowledged by the owners. Fractional owners need to understand that when safety requirements are not met they are subject to FAA enforcement actions or liability risks. Suspension or revocation of management specifications would affect the operation of the entire fractional ownership program, impacting the program manager and all of the fractional owners in the program.

Section 91.1014 Manager's Responsibility for Ensuring Compliance

NWJ and an individual state that the proposed paragraph further demonstrates the need to designate an individual as ''Program Manager'' rather than an entity. They believe that, in order for a fractional ownership program manager to ''ensure that its program * * * (is) sufficient to ensure owner compliance * * *,'' the accountability of an entity alone may not be sufficient. PASS believes that this paragraph should be deleted, as it confuses owner compliance with operational control.

FAA Response: The FAA agrees that there is a need to have a system to identify contacts within a program management company. The program operating manual required under § 91.1023 and § 91.1025 will spell out procedures and identify responsibilities. To avoid the confusion raised by the PASS comment, the FAA has inserted subheadings into the final rule so that it is clear that §§ 91.1014–91.1443 address program manager responsibilities. Furthermore, § 91.1014 has been revised to clarify the operation process and requirements for issuance of management specifications. This issuance is based on a finding that the program manager meets the applicable requirements, is properly and adequately equipped, and is able to conduct a safe operation. The section title has been changed to ''Issuing or denying management specifications.''

Sections 91.1015, 91.1017 Management Specifications and Amending Program Manager's Management Specifications

NBAA states that, in addition to defining the contents of the program manager's management specifications as well as the process for amending them, the FAA also must develop rules that define the management specification application process (including any information required as part of the application) and define a process to issue or deny management specifications.

NATA and Flexjet state that all fractional program managers, both existing and start-up, will be required to make application for management specifications from the FAA. However, the NPRM does not identify the process by which a prospective program manager would apply and receive management specifications. Therefore, NATA and Flexjet support clear information within the regulation specifying how application is to be made, what supporting materials must be submitted with a formal application and what criteria the FAA will use as a basis to deny or issue management specifications.

PASS believes that a list of items should be added to the management specifications, such as carrying hazardous materials, geographic operating area for fractional operations, VMC or IMC operating capabilities, navigation authorizations, and cargo carrying capabilities. PASS states that Management Specifications should be handled just as Operation Specifications are currently handled by part 135 certificate holders.

FAA Response: The management specification application process will be similar to the process for issuing operations specifications under part 119 for persons conducting operations under parts 121 and 135. Additional rule language has been added in § 91.1014 to make it clear that management specifications are issued to the program manager on behalf of the owners if the program meets the regulatory requirements of subpart K. The management specifications will be processed on the FAA operations specifications subsystem and will be managed by the same procedures used to manage operations specifications for air carriers operating under parts 121 and 135. The application process is referenced in the final rule and will be detailed in guidance documents. Section 91.1015(a)(10) allows the Administrator to specify additional items to be contained in management specifications. This gives the FAA and the program manager the flexibility to amend or revise the management specifications as appropriate.

Section 91.1016 Confidential Information (Suggested)

NATA and Flexjet comment that, because subpart K will require fractional owners and program managers to provide commercial and/or financial information from time-to-time, they strongly recommend that certain information be protected as confidential. NATA and Flexjet recommend the addition of a separate section to address this issue.

FAA Response: As is the case with all Freedom of Information Act issues, the FAA will handle requests that information be treated as privileged or confidential commercial or financial information under the Department of Transportation rules in 49 CFR part 7, particularly §§ 7.13 and 7.14. Whether specific information about fractional owners (for example, names, addresses) is made available to the public by program managers will depend on the contractual relationship between these parties. Fractional owners will be identified in the files of the FAA's Aircraft Registry in Oklahoma City and these files are available to the general public. Section 91.1015(b) allows the program manager to keep a current list of fractional owners at its principal base of operations or other location and referenced in its management specifications, instead of listing all owners' names in that document. This provides for a degree of confidentiality of owner information.

Section 91.1019 Conducting Tests and Inspections

PASS believes that the FAA needs the authority to conduct en route inspections in § 91.1019(b)(2) as in part 121 and 135. Crew coordination and safe-operating procedures are paramount for the safety of the passengers. The only way that the FAA can provide effective oversight and surveillance of these types of operations is by conducting en route inspections. PASS states that there continues to be problems with Crew Resource Management, especially with the newer ''Glass Cockpit'' aircraft and that information overload is a constant challenge to the pilots. Surveillance of the crews will allow an unbiased evaluation of the crew performance, which in turn will validate how effective the training program is working. This will provide valuable insights that can be used to improve future training requirements. PASS recommends that this paragraph should at least be changed to include en route inspections on aircraft that require two flight crewmembers for operation of the aircraft.

EJA states that proposed § 91.1019(c) requires that each employee of a program manager that is responsible for maintaining the program manager's records must make those records available to the FAA. EJA believes that FOARC intended this requirement to apply only to safety-related records, and not generally to all documents maintained by a program manager. In a similar provision of the NPRM, the FAA used the phrase ''pertaining to operational safety of the program, including all program logbooks and maintenance records' to specify which program manager records an owner has the right to inspect. EJA recommends that the quoted phrase be added to § 91.1019(c).

NWJ and an individual object to proposed § 91.1019(c) because the paragraph does not specify which records are being referenced, for example, maintenance records, pilot records. Also, the commenters believe, if such responsibility exists, the person who maintains that responsibility should be named in the management specifications.

Flexjet states that § 91.1019(b)(1) should be clarified to state that the Management Specifications may be maintained not only at its principal base of operations, but also at a place approved by the Administrator, as is provided in §§ 91.1015(e) and 91.1027(a).

FAA Response: The FAA agrees with the concern raised by EJA but believes the language suggested by EJA is too narrow. The records that must be made available to the Administrator would be any records required by or necessary to demonstrate compliance with subpart K.

The FAA disagrees with the recommendation by PASS to require en route inspections for fractional program operations. The complexities of the operation precludes scheduling en route inspections. This is similar to the philosophy applied to on demand part 135 operations. En route inspections are only required for commuter operations and are not required as part of the national work program for on demand operations. Furthermore, the FAA has other means of effectively surveilling the operation, including acceptance and approval of procedures, manuals, and training programs. As part of its implementation strategy, the FAA is developing a work program for fractional ownership operations that mirrors the national guidelines for surveillance and inspection of part 135 on demand operations. The FAA also disagrees with the suggestion made by NWJ that a person responsible for the records should be named in the management specifications. The operations manual will define personnel responsibilities.

The FAA agrees with the suggestion by Flexjet and has modified the final rule so that paragraph (b)(1) permits the management specifications to be maintained at the program manager's principal place of business or at a place approved by the Administrator.

Section 91.1021 Internal Safety Reporting

PASS believes that fractional owners should be added to proposed § 91.1021(b) and required to respond to an aviation incident/accident.

Flexjet currently utilizes anonymous internal safety reporting procedures for its crewmembers. Flexjet strongly supports safety reporting, and supports an environment of safety without retribution. However, Flexjet recommends that FAA implementation guidance should clarify for the FAA and the industry that, although no retribution may be taken against an employee for filing a report in accordance with this section, such a filing cannot prevent the program manager from taking corrective action in response to the underlying safety issue.

FAA Response: The FAA disagrees with the recommendation by PASS. The NTSB regulations provide NTSB with broad authority to get information from all persons with knowledge related to an incident or accident. The owner has responsibility under the NTSB regulations to notify the NTSB of an incident, accident, or overdue aircraft. The accomplishment of this notification can be delegated to a program manager. The procedures required by § 91.1021(b) and included in the program operations manual establish the means for the owners to fulfill their accident response responsibilities. Therefore, FAA believes no change to the regulatory language is required.

The FAA agrees with the comment by Flexjet and would expect such corrective action should take place in response to underlying safety issues.

Section 91.1023 Program Operating Manual Requirements

EJA states that in proposed § 91.1023(h), there is a reference to an ''approved inspection program operations manual,'' a term that is not defined in the proposed rule. EJA thinks that this reference should be to an ''approved 'aircraft inspection program,' '' which is addressed in proposed § 91.1109. EJA recommends that the ''approved aircraft inspection program'' concept from § 91.1109 be incorporated into § 91.1023. Also in § 91.1023(h), the reference to ''stations'' may be confused with the term as used in part 121 or 135. EJA recommends that the term ''stations'' be replaced with the term ''facilities.''

EJA also states that program managers that are also certificated under part 121 or 135 should be able to use, for subpart K purposes, the general operations manual from those certificated operations, so long as the manual addresses differences between the operations under part 121 or 135 and the operations under part 91, subpart K. EJA recommends that §§ 91.1023 and 91.1025 be amended to provide this option.

EJA further comments that under proposed § 91.1023, the program operating manual is a document that is accepted by the FAA. However, some of the procedures contained in that manual, such as the destination airport analysis under proposed § 91.1037, must be approved by the FAA. EJA recommends that § 91.1037(c) be amended to clarify this.

PASS believes that the program operating manual should be accepted by the Administrator and the program management company held responsible for keeping it current and up-to-date. PASS also believes that if the operating manual is not in hard copy form, and is transmitted electronically, as provided under § 91.1023(g), a means must be made to ensure that the information is

current. PASS further comments that, contrary to § 91.1023(h), the program-operating manual should be carried on every aircraft in case the aircraft has to divert to another destination or flies into an airport that does not have approved maintenance services or personnel.

FAA Response: The FAA agrees with the recommendation by EJA that paragraph (h) should reference ''approved aircraft inspection program'' and has changed paragraph (h) accordingly. The FAA also agrees that the term ''stations'' should be changed to ''facilities.'' The FAA agrees with EJA's comment that program managers certificated under part 119 should be able to use the general operations manual from a part 119 certificated operation if procedures are applicable to subpart K and if any differences are clearly stated. Use of a single manual for different types of operations must be authorized by the FAA in the management specifications.

The FAA agrees with the comment by EJA that manuals that are ''accepted'' sometimes contain certain portions that must be ''approved.'' The FAA does not think any change to the rule is needed. The details of the procedures will be addressed in guidance documents.

The FAA agrees with PASS that the program operating manual must be acceptable to the Administrator and kept current. The FAA agrees that appropriate portions of the program operating manual must be carried on the aircraft when it is away from the principal operations base. This is reflected in §§ 91.1023(a) and (f).

Section 91.1025 Program Operating Manual Contents

NWJ and an individual state that the program operating manual should also contain the name or names of persons responsible for updating the manuals.

FAA Response: Section 91.1023(a) requires the program manager to keep the manual current. While the names of persons delegated to perform this function may be included in the manual, the FAA does not believe this should be mandatory.

Section 91.1027 Recordkeeping

PASS believes that the program manager should be responsible for keeping a list of qualified mechanics and repair facilities acceptable to perform maintenance and should identify and notify the Administrator of those required to follow an FAA approved drug testing program.

FAA Response: The program manager is required to ensure that persons who perform maintenance are qualified. The final rule allows an exception for emergency maintenance for those otherwise qualified personnel who do not meet the drug and alcohol education provisions of § 91.1047 or the testing provisions of §§ 135.251 and 135.255.

The FAA believes it would be an administrative burden for the program manager to maintain a list of all qualified mechanics and repair facilities and to notify the Administrator of those mechanics or facilities that follow an FAA approved testing program. Instead the program manager must notify the FAA of all persons who perform emergency maintenance who do not meet the applicable drug and alcohol education or testing requirements.

In the final rule § 91.1027(a) is amended to make the terminology consistent with § 91.1015.

Section 91.1029 Flight Scheduling and Locating Requirements

PASS believes that all flights should be required to file a flight plan for all operations, visual flight rules (VFR) or IFR.

FAA Response: The requirement in § 91.1029 was derived from the existing requirement in part 135. The program manager must have a process for flight locating and a flight plan is one way to facilitate flight locating. In most situations subject to subpart K, additional procedures will exist. For turbo-jet operations it is expected that an IFR flight plan will be filed. The program manager must have an adequate system in place and the FAA expects that most companies will meet this requirement by filing a flight plan. For clarification the final rule § 91.1029 has been amended to add the word ''adequate'' to paragraphs (a) and (b).

Section 91.1035 Passenger Awareness

A flight operations manager recommends deletion of the proposed requirement that passengers be advised of the name of the entity in operational control of the flight since proposed §§ 91.1009—91.1013 have already clearly established that ''the owner be advised and sign a document defining the implications of operational control.''

PASS believes that if additional passengers are picked up separately, they should be briefed on emergency procedures and that all briefings should be in languages spoken by the passengers.

Atlantic Aviation Flight Services comments on what it believes is a disparity between the current part 135 regulations regarding passenger briefings and the proposed changes in the subpart K revision. Atlantic believes that these regulations should be the same regarding the content of this regulation and when the briefings need to be accomplished. The commenter believes there is an assumption in proposed § 91.1035(g) that there is no need for a passenger to listen more than once to a briefing since he or she would be familiar with the safety aspects after one briefing. The commenter believes that if this is the case, it should apply to the part 135 regulation.

Flexjet recommends that a provision be added to authorize delegation to a flight attendant or other crewmembers of the responsibility to brief passengers.

FAA Response: The FAA disagrees with the commenter who recommends deletion of the proposed requirement that passengers be advised of the name of the entity in operational control of the flight. The identification of the entity having operational control is a critical aspect of the fractional ownership concept. However, paragraph (c) of § 91.1035 also requires the briefing to state whether the flight is conducted as a program flight or a commercial operation under part 121 or 135 of the regulations. The FAA is deleting this provision because there is no regulatory requirement under part 121 or 135 to state the operating rules under which the flight is being conducted.

In response to the comments on when the briefing is conducted the FAA agrees that there is an ambiguity as to whether briefings must be done before each take-off, or before a previous flight on the aircraft. The FAA is deleting proposed paragraph (g) and requiring that prior to each take-off the pilot in command must ensure that all passengers have been briefed.

The FAA does not agree that language comparable to § 91.1035(g) should be added to part 135. While there are minor language differences, both rules require that all passengers receive a briefing.

The FAA disagrees with the comment that all briefings should be conducted in languages spoken by the passengers. Briefing cards are used to supplement the oral briefing. Briefing passengers in all languages is impractical and is not required for operations under part 121 or 135.

One commenter recommends that a provision be added to allow delegating the responsibility to brief passengers. This change is not necessary because the rule already provides in paragraphs (d) and (e) that the briefing can be given by a pilot, another crewmember, or a recording.

Section 91.1041 Aircraft Proving Tests (Also § 135.145)

EJA recommends several amendments, primarily to make it clear

that an aircraft that has already had proving tests (for example, under part 121 or part 135) need not undergo further proving tests.

Jet Sales & Services, Inc., states that proving tests are not efficient and are not appropriate because they are nonproductive expenditures of funds.

Kaiser Air, Inc., is strongly in favor of the proposed change to § 135.145. Likewise, NWJ and an individual applaud the efforts of the FOARC committee and the FAA to provide qualified part 135 operators relief from costly proving runs under the provision of § 135.145(b).

FAA Response: Proving tests are necessary to evaluate each applicant's ability to conduct operations safely and in accordance with the applicable regulations. Proving tests consist of a demonstration of the applicant's ability to operate and maintain an aircraft new to the operator's fleet or the applicant's ability to conduct a particular kind of operation such as part 121 domestic, flag or supplemental. Current § 135.145 requires an applicant to successfully complete proving tests before the FAA may authorize the operation of each type of turbojet aircraft or each type of aircraft for which two pilots are required for operations under visual flight rules (VFR). The FAA disagrees with the comment that proving tests are not efficient or productive. The basic principle is that each company has the responsibility to show that it can operate each aircraft safely and in compliance with the requirements.

Proving tests are necessary for operations being approved under subpart K, even if the aircraft has already had proving tests under part 121 or part 135 operations, because the procedures and requirements are different and the program manager needs to prove that it can conduct subpart K operations safely and within the regulations. Where there are similarities between the operations, the FAA will consider modifying the test requirements, including the use of non-flight table-top exercises. The FAA will consider on a case by case basis how extensive the proving tests need to be for companies that have previously approved aircraft under part 121 or 135, or for companies that have been operating safely under part 91.

In the final rule, the FAA has added language requiring validation tests for both subpart K of part 91 and part 135, codifying what is currently described in the Air Transportation Operations Inspectors Handbook (Order 8400.10, Volume 3, Chapter 9). That chapter of the Handbook describes how FAA inspectors conduct proving and validation tests to evaluate an applicant's ability to conduct operations safely and in accordance with the applicable regulations before issuing an operating certificate, adding a new aircraft to the applicant's fleet, or authorizing a new area or route. Validation tests are specifically used to evaluate requests for authorization to operate outside U.S. airspace, to add a long-range navigation system or flight navigator, to operate into a new area, to add special or unique navigation procedures, or for special performance or operational authorizations.

For fractional ownership programs under subpart K, it is necessary to add specific language on validation tests to § 91.1041, in addition to the proposed language on proving tests, in order to specify how the FAA will determine under § 91.1014 that the applicant is properly and adequate equipped and is able to provide program management services. For part 135, the new language is primarily a codification of the procedures they already go through to obtain various authorizations.

An addition to the validation test requirements has been added in final §§ 91.1041(d) and (e) and 135.145(d) and (e) to require validation tests when a program manager or part 135 certificate holder adds to its operations an aircraft that is a new make or is of similar design to a previously approved aircraft. As a result of this final rule, such aircraft are no longer required to have proving tests. However, the FAA has determined that a validation test should be conducted to determine that the operator is capable of conducting operations safely with that aircraft and in compliance with the applicable regulatory standards. In most cases the applicant will not be required to conduct an actual flight to validate the aircraft. However, the FAA will conduct an in-depth review of the applicant's proposed procedures, training programs, manuals, facilities, and maintenance programs relevant to the new aircraft.

The FAA will determine the level of demonstration required, depending on the similarity between the previously approved airplane and the new make and model. For example, the FAA may develop scenarios for different types of conditions or events and ask the program manager or certificate holder to show how it would follow the proper procedures in reacting to such conditions or events.

For both proving tests and validation tests, the Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary. Also, proving tests and validation tests may be conducted simultaneously when appropriate.

The following table summarizes the differences between the current proving test and validation test requirements for part 135 and the final rule requirements for fractional ownership programs under subpart K and certificate holders under part 135:

Comparison of current and final proving and validation test requirements	Current requirements for part 135	Final rule requirements for part 135 and part 91, subpart K
Aircraft (except turbojets) for for which 2 pilots are required under VFR.	Proving test required for each aircraft unless operator has previously proved that make and similar design aircraft under part 135. Deviation authority for proving test requirement.	One time proving test required for an aircraft, except turbojets, for which 2 pilots are required under VFR. Validation test required for each additional make and similar design aircraft, unless operator has previously proved that make and similar design aircraft under applicable part. Deviation authority for proving and validation test requirement.
Turbojet aircraft	Proving test required for each turbojet aircraft unless operator has previously proved that make and similar design turbojet aircraft under part 135. Deviation authority for proving test requirement.	One time proving test required for a turbojet aircraft. Validation test required for each additional turbojet aircraft, unless operator has previously proved that make and similar design turbojet aircraft under applicable part. Deviation authority for proving and validation test requirement.

Section 91.1045 Additional Equipment Requirements

The Teamsters comment that as proposed, this section would not require any aircraft used in a fractional ownership program to add any equipment not already required by another current regulation, for example, the requirement for GPWS and TCAS already exists for most turbojet aircraft. The commenter asks whether this section has any useful purpose other than to ensure that certain program managers do not have to retrofit their 75 Citation V Ultra turbojets with TCAS.

Dassant Aviation recommends that the final rule include compliance dates to allow sufficient time for any newly required equipment to be ordered and installed. The compliance period should correspond to the stipulated period for such equipment in part 121/135.

FAA Response: The intention of § 91.1045 is to ensure that fractional program aircraft have the same equipment as for the same aircraft when used for part 121 supplemental operations or for part 135 on-demand operations. While it is true that part 91 addresses GPWS and TCAS, those rules are not as stringent as the part 121 and 135 requirements. For example, § 91.221 states that any TCAS system installed must be approved by the Administrator and that if it is installed, it must be turned on and operating while the aircraft is in flight; however, it does not require the installation of TCAS equipment. The final rule has been rewritten to clarify which equipment rules apply to fractional ownership aircraft. This delineation is based on the 121/135 dividing line for nonscheduled operations. Aircraft that have more than 30 seats or a payload capacity of more than 7,500 pounds must follow the same equipment standards and applicable regulations as for supplemental operations conducted under part 121. Aircraft that have a passenger-seat configuration of 30 seats or fewer, excluding each crewmember, and a payload capacity of 7,500 pounds or less, and any rotorcraft must follow the same equipment standards and applicable regulations as for on-demand operations conducted under part 135.

The only delayed compliance time provided in the part 121 and 135 rules is for the installation of terrain awareness and warning systems, which are required by March 29, 2005. For existing fractional ownership programs the other equipment must be installed on or before the compliance date for the final rule, which will be 15 months after the date of publication in the **Federal Register**. Since many of the aircraft currently used in fractional ownership programs already meet the requirements, the FAA does not expect this to cause undue hardship. New entrant fractional ownership programs must have the other equipment installed before they receive their management specifications.

Section 91.1049 Personnel

EJA recommends inclusion of language in proposed § 91.1049(e) to clarify that scheduling or flight release personnel ''are able to perform their duties.''

EJA also answered FAA's question concerning ''whether this proposal is appropriate for a single pilot operation permitted under the deviation provision contained in proposed § 91.1049.'' EJA recommends that single pilot operations be addressed in the rule because if this problem is handled under deviation authority there will be ''wide variation in interpretation of the regulations by the different FSDO's throughout the country.''

The Teamsters ask if the required ''staffing level'' of this section (3 pilots per aircraft) has to be full-time employees, or if they can be part-time help when needed.

FAA Response: In response to EJA's comment on scheduling and flight release personnel, it is the responsibility of the program manager to ensure that all personnel are trained and qualified in accordance with the program manager's training program. The training program for scheduling and flight release personnel must be appropriate for the size and complexity of the operation.

In response to EJA's concern about the FAA granting inconsistent deviations for single-pilot operations, the FAA is developing guidance for subpart K implementation to ensure that there is uniformity among the FSDO's for granting such deviations. The FAA needs to consider the size, complexity, and organizational structure of the new fractional owner programs that might exist in the future. The FAA needs to have the latitude and flexibility to grant deviations when appropriate.

In response to the questions about staffing levels, program managers may use either full or part time employees, who may be either direct or contract employees. In the final rule, the FAA has changed to requirement to employ ''at least three pilots'' to ''an adequate number of pilots'' because there are so many variables and differences among fractional ownership programs that it would be difficult to enforce and would lead to an excessive number of deviation requests. The number of employees for a particular program manager would be determined by the need to have adequate staff available so that the program manager can meet other requirements of the subpart, such as the rest and duty rules. Also, the FAA will consider the needs of program managers during temporary situations, such as when hiring the initial cadre staff for startups and for companies adding new aircraft types, or, for small companies, the time between when one pilot leaves and another one is hired.

Section 91.1051 Pilot Safety Background Check

NBAA, NATA, and Flexjet state that statutory authority is needed to give them access to motor vehicle driver records and other records that a program manager would be required to access in a safety background check. Such records are normally protected by the Privacy Act; however, in 1996 the Pilot Records Improvement Act provided air carriers with the responsibility and authority to check such records when hiring pilots.

FAA Response: The FAA deleted paragraph § 91.1051(c), which would have required a program manager to access motor vehicle driver records. This provision may be added when the necessary legislative authority is obtained. The other background safety check requirements of § 91.1051 do not require legislative authority and remain in the final rule.

Section 91.1053 Flight Crew Experience

AOPA states that the NPRM includes a requirement for flight crew experience, but uses an industry standard applicable for multi-engine turbine-powered aircraft. The operational demands and missions of smaller aircraft are different from those of turbine-powered multi-engine aircraft, yet the NPRM does not make a distinction. AOPA believes the final rule must specifically address and delineate flight crew experience needs for non-turbine powered multi-engine and single-engine aircraft. Also, AOPA comments that all of the crewmember experience requirements would only apply to those operations flown by flight crewmembers of the fractional ownership program manager under subpart K, not owner-flown flights.

AOPA recommends that the FAA include a standard for non-turbine powered multi-engine engine aircraft similar to that used in part 135. The pilot in command requirement under proposed § 91.1053 for these aircraft should be 1,200 hours. In addition AOPA recommends that these smaller aircraft operations not require a second

in command. A requirement of 500 hours should also be established for a single-engine aircraft pilot in command. AOPA states that accepting these recommendations would also require the FAA to alter the flight crewmember flight and duty time, training requirements and other areas of subpart K as appropriate.

An individual commenter notes that since the flights are not considered commercial operations and are not held out to access by the public, requiring the PIC to have an airline transport license (ATP) and a first class medical certificate would cause undue hardship. Many of the owners of fractional aircraft are pilots in their own right, and would not be able to fly their own aircraft unless they held an ATP and first class medical.

According to this commenter, requiring 1500 hours for a commercial license, an instrument rating, and a type rating (if the aircraft required a type rating) should be sufficient for this type of operation as it is much more restrictive than the current minimums for part 91 non-commercial operation in large turbine powered multi-engine aircraft (currently a private pilot certificate with a type rating and an instrument rating for non-commercial operations). According to the commenter, although some relief is provided by the proposed regulation, it is up to the local FAA FSDO offices to issue the relief, which, in practice, would be time consuming and nationally non-uniform.

Another individual commenter suggests changing the language in § 91.1053(a)(2) from ''multi-engine turbine-powered'' to ''multi-engine turbojet powered.'' The current wording would require operators of light twin turbine-engine aircraft such as Beech KingAirs and Cessna Conquests to use ATP pilots, which is much more restrictive than the current part 91 requirements. Light turboprop aircraft should be included under the requirements in paragraph (a)(3). This word change would make many requests for deviations unnecessary.

FAA Response: While the flight time requirements for PIC's and SIC's in § 91.1053(a)(1) are the same for all sizes of aircraft, paragraphs (a)(2) and (a)(3) make a distinction between the certification and rating requirements for multi-engine turbine-powered fixed-wing and powered-lift aircraft and the certification and rating requirements for all other aircraft. In addition § 91.1053(b) provides for deviations from paragraph (a), depending on the size and scope of the operation. Although these experience requirements are more restrictive than the current part 91 requirements, the FOARC endorsed this level of safety. The FAA believes that any person piloting a fractionally owned aircraft, whether they are a professional pilot employed by the management company or a fractional owner/pilot, must meet the requirements of § 91.1053 unless the size and scope of the operation warrant a deviation. When a person becomes a fractional owner of an aircraft that is part of a large and complex program, he or she has a responsibility to the other fractional owners to assure the safe operation of that aircraft. This is in contrast to a person who owns and operates his or her own aircraft or perhaps shares the ownership with a few other people. As explained above under ''Owner-piloted Multiple-owner Aircraft,'' a fractional ownership program under subpart K is probably not the appropriate type of shared ownership for persons who wish to pilot their own aircraft.

Section 91.1055 Pilot Operating Limitations and Pairing Requirement

EJA believes that, as used in § 91.1055, the terms ''program flight'' and ''program flight time'' are ambiguous and not defined. The intent of the NRPM appears to require that the pilot in command and second in command have obtained the requisite 75 hours flying for the program manager that currently employs them, rather than for a previous program manager.

EJA also believes the term ''type aircraft'' is confusing because of the use of the term in connection with airmen and aircraft certification. EJA suggests that the final rule should clarify that the pilot must have obtained the required flight time in the make and model of that aircraft assigned, and, if a type rating is required, in that type aircraft.

FAA Response: The FAA agrees that the required hours of flight time should be clarified. The term ''program flight time'' has been changed to ''flight time'' to clarify that the hours may be obtained in that make and model or type aircraft (in operations under part 91, 121, 125, or 135), and are not limited to program flights (*i.e.*, flights where the fractional owner has designated the passengers or property on board) or flights for a particular program manager. Also, as suggested by EJA, the rule language has been changed to tie the number of hours to particular make and model aircraft or to a type aircraft, if a type rating is required for that aircraft.

Rest and Duty Issues: General

NBAA, NATA and Flexjet fully support the proposed flight, duty and rest time requirements for all pilots operating fractional program aircraft. NBAA believes that this proposal provides a balanced approach for limiting pilot duty and flight times while providing maximum flexibility for aircraft and crew scheduling. NATA and Flexjet believe that these requirements should be issued by the FAA independent of any other requirements imposed by the FAA on other segments of the aviation community. They believe the resolution of those matters should not impact the regulation of fractionally-owned aircraft operated under part 91. They do not believe that the FAA should create a ''one size fits all'' flight, duty, and rest regulation to cover the diverse types of aircraft operations conducted under the regulations. NATA adds that because fractional ownership operations are private aircraft operations, it would not be appropriate to hold these operations to the same flight and duty-time regulations that commercial aviation operations are subject to. NATA also points out that the proposal has more restrictive rest requirements than part 121. Proposed subpart K requires 10 hours of rest with no reduction.

The EJA Master Executive Council Chairman believes that collective bargaining agreements have provided some part 121 pilots with the most sensible duty and rest conditions in the entire industry. These agreements, combined with recommendations from leading researchers in the field could form the basis of a new comprehensive set of duty and rest guidelines for all pilots regardless of the type of equipment they fly or under which regulations they operate. This should be of the very highest priority for the FAA.

The Teamsters and NWJ mention that the regulations as written do not address rest and duty issues from a crew member's perspective. One commenter notes that the current job responsibilities of a fractional crew are far different from any airline or corporate flight position, resulting in greater fatigue, pressures, and responsibilities. Fractional pilots are subject to multiple legs across different time zones, loading and unloading bags multiple times, and customer service issues, resulting in minimum (real) rest. Several time zone changes with very little consideration of their effect on the pilot combined with multiple days, bad weather, unknown airports, special airport procedures, and international flights further close the window of safety.

FAA Response: The FAA agrees that there are many similarities between fractional ownership operations and

other categories of aviation, such as corporate and on-demand operations, but there are also some unique aspects of fractional ownership operations, such as crew and aircraft positioning and scheduling. Currently, fractional ownership operations have no regulatory flight, duty, and rest requirements. The requirements of this final rule will apply standards comparable to those applied to on-demand operations, and go beyond those standards in specific areas, such as in applying time zone restrictions. While a company is free to establish collective bargaining agreements with its pilots, it is the inherent responsibility of the FAA to establish minimum standards that are appropriate to each type of operation. The FAA has made some changes to the proposed rule, as explained below. Also, the FAA intends to monitor the implementation of these rules and may do future rulemaking, particularly at the time that the agency develops proposed revisions to flight, duty, and rest requirements for part 121 and 135 operations.

Single Pilot. NATA and Flexjet believe the proposed regulation would be appropriate for single-pilot operations. In addition, the deviation authority of proposed § 91.1049 allows the FAA to authorize single-pilot operations when the FAA determines that it would be appropriate given the circumstances. The Teamsters believe the proposed rules would not be appropriate for single pilot operations.

FAA Response: The deviation authority in § 91.1049 for single-pilot operations is intended to allow operations with certain small aircraft certificated for one pilot. Part 135 has a similar provision for such aircraft. One of the elements in authorizing single-pilot operations will be to prevent pilot fatigue. Therefore, the rules in § 91.1059 applicable to a single pilot impose a daily flight time limit of 8 hours instead of 10 hours, which may be extended only one hour instead of two hours, because of circumstance beyond the control of the operator, such as bad weather. In addition, the deviations may provide other conditions to help prevent pilot fatigue, such as the use of an autopilot or fatigue countermeasures.

Flight Attendants. The EJA Master Executive Council Chair, NWJ, and Teamsters state that flight attendants should also be protected by duty and rest requirements. A flight attendant's primary duty is to provide cabin safety. Fatigue impairs their performance just as it does a pilot's. The Teamsters suggest using the part 135 flight attendant rules.

FAA Response: The FAA agrees with these comments and has added duty and rest requirements for flight attendants to the final rule. These requirements are based on those applicable to part 135 operations in § 135.273. However, a fractional ownership program manager has the option of following the pilot duty and rest requirements in subpart K, instead of the flight attendant requirements. Some operators prefer to schedule the entire crew under the same rules, instead of complying with different rules for the cockpit and cabin crews. In addition a fractional ownership program manager may use the flight attendant rules of part 121 or part 135, instead of those under subpart K, if authorized. This option may be most useful for program managers that conduct both part 91 and part 135 or 121 operations.

Fractional ownership operations must comply with the rest and duty requirements whenever a flight attendant is used, not just in cases when the flight attendant is a required crewmember under § 91.533 for flights with 19 or more passengers. This is necessary because whenever a qualified crewmember is on board, he or she must be rested and able to perform the duties safely.

Research. Four commenters (two individuals, Teamsters, and EJA Master Executive Council Chairman) are surprised that FOARC did not consider research done by NASA and others on the topic of rest and duty. One commenter thinks there is an opportunity to look outside the box to a serious solution to fatigued crews and the safety hazard that comes from this type of professional occupation.

The Teamsters note that § 91.1057 is filled with unenforceable language and in many cases goes against decades of studies conducted by NASA and others regarding duty time and rest requirements. At a time when more and more accidents are being blamed on fatigue and the FAA is finally enforcing various rest requirement regulations, FOARC proposes that the FAA ignore the research and its own definitions found throughout the FAA regulations.

The EJA Master Executive Council Chairman thinks that if the FAA is serious about ''one level of safety,'' it should listen to the experts in the field and make consistent changes to all duty and rest regulations based on science, not politics. There should be no difference in duty and rest regulations whether one is flying under part 91, 135, or 121. The EJA Master Executive Council Chairman and Teamsters note that all humans are subject to fatigue, regardless of the type of aircraft being flown or for whom they are flying.

IBT notes that substantial literature exists that suggests an average minimum of eight consecutive hours of sleep is required to ensure a rested state. Further, alertness is impaired by fatigue, especially at night and during multi-time zone crossings. Current thought suggests that to achieve eight hours of sleep, a crewmember needs at least ten (10) consecutive hours of rest opportunity. This provides a normal maximum duty period of 14 consecutive hours. Beyond that crews should be augmented. This commenter states that, historically, in air transport operations, eight hours has been the normal maximum flight time for a two-person crew and no rationale has been presented to change this maximum. Also 12 hours should be established as the maximum flight time for a three pilot crew. This too has been traditionally adhered to in air transport operations.

FAA Response: The FAA did consider the research that has been conducted on fatigue in the aviation industry. Many of the principles recited by IBT have been incorporated into the subpart K flight, duty, and rest requirements. The subpart K requirements were based on those applicable to on-demand operations in part 135 with additional requirements based on unique aspects of fractional ownership operations. In addition, the research on fatigue countermeasures will be reviewed and incorporated into the guidance for fractional ownership operations, as appropriate.

Similarity to Parts 121/135. A commenter believes that the flight and duty limits should be the same requirements as part 121 or 135. NWJ, Teamsters, and an individual recommend that the rest rules for fractional pilots should be the same as those for pilots operating under part 135. A commenter notes that a higher level of safety would be maintained. By voluntarily meeting these high standards, these current fractional programs have had an excellent safety record. However, this commenter has seen an erosion of this voluntary compliance to remain competitive. If the regulatory minimum were 14 CFR 135/121, the high level of safety we enjoy today will be maintained.

FAA Response: The FAA believes that the subpart K flight, duty, and rest requirements are comparable to part 121 and part 135 in the level of safety provided, and in addition, address some unique aspects of fractional ownership operations. In the final rule, the FAA has added a provision allowing

fractional ownership program managers to follow the applicable unscheduled part 121 or part 135 flight time limitations, duty period limitations, and rest requirements instead of the subpart K requirements. This would be particularly helpful for operators who conduct both subpart K and part 135 or part 121 operations because it would facilitate scheduling and recordkeeping for crewmembers who work under multiple types of operations. A fractional ownership program manager who wishes to follow part 135 or part 121 rules must obtain approval to do so and the approval must be included in the management specifications for that program manager.

Section 91.1057 Flight, Duty and Rest Time Requirements

Section 91.1057(a)—Definitions

Augmented flight crew. According to EJA, this definition does not specify the qualifications for the third pilot. This commenter uses, and believes that the FAA intends to require that program managers use, a qualified PIC on the flight deck at all times. This requires that two pilots in command be aboard the aircraft, resulting in an augmented crew that is composed of, at a minimum, a designated/qualified pilot in command, a qualified pilot in command, and a designated/qualified SIC. IBT concurs with the proposed definition, but would require a first class-type reclining chair for the pilot at rest.

FAA Response: The FAA agrees with these commenters. The FAA intended that the subpart K rule would treat augmented crews the same as in part 135. In the final rule, language from § 135.269 has been included to specify the crew qualifications for a three- or four-pilot crew and to provide that the aircraft must have adequate sleeping facilities.

Calendar day. Kaiser Air, Inc. believes the definition would be more clear using only Coordinated Universal Time and deleting ''or local time.''

FAA Response: The FAA disagrees with this comment because the definition used in § 91.1057 is consistent with the definition for ''calendar day'' used in § 135.273. The main point is that the day should include 24 hours of elapsed time, regardless of time zone changes.

Extension of normal duty. IBT proposes that this definition be eliminated. The EJA Master Executive Council Chairman notes that this is an ambiguous definition, open to wide interpretation.

A Flight Operations Manager notes the end of the definition says ''within the planned flight time'' when it should say ''within the planned duty time.''

EJA extends this thought, noting that this definition in the NPRM appears to refer not only to an extension of normal duty time, but also to an extension of flight time. The phrase as defined, and as used in the flight, duty, and rest tables, should be changed to ''extension of normal duty and flight time.'' This commenter also suggests that the regulation provide additional examples of situations that would justify the increased duty period.

A flight operations manager notes that in published legal interpretations the FAA General Counsel consistently defines ''circumstances beyond the control of the certificate holder/program manager'' to include adverse weather, late passengers, mechanical delays, air traffic control delays, etc. These are all circumstances beyond the control of the operators or flight crews and should be included in the rule when implemented.

The Teamsters state that the FAA has been slowly making changes that are demanded by NTSB and researched by dozens of agencies, yet allows a definition that goes against common sense and its own recent enforcement policy.

EJA suggests ''period of duty'' (used in the definition of ''extension of normal duty'') be changed to ''duty period'' (a defined term in the NPRM), to be consistent.

FAA Response: In response to these comments the FAA has reconsidered what flexibility is appropriate when, because of circumstances beyond the control of the program manager, a flight arrives late. The FAA has determined that program managers should be allowed to extend the flight time for a 2-pilot crew by up to 2 hours in such circumstances, but that it is not appropriate to extend the duty period or reduce the rest periods. The flight time for a 1-pilot crew operating under a deviation could be extended by 1 hour. The FAA believes that this solution provides the most flexibility for daily scheduling, while ensuring that adequate rest is provided and that duty periods of more than 14 hours are prohibited. Therefore, in the final rule, the defined term has been changed to ''extension of flight time'' and ''period of duty'' has been changed to ''flight time.'' The chart in § 91.1059 has been changed accordingly.

Multi-time zone flight. Kaiser Air, Inc. notes that this section needs more clarification. Does ''crossing'' include the time zone at take-off and landing? How many time zones are ''crossed'' from California to New York—2, 3, or 4? What about flights that make fuel stops and are not ''continuous?''

EJA mentions that ''continuous'' is undefined in this section. The commenter suggests including multi-time zone crossings in the same duty period, since it would be irrelevant whether a flight had been made non-stop, or with an intervening stop, where at the end of the duty day, the flight crew had crossed multiple time zones. This commenter recommends that the definition be changed to reflect this, with the suggested phrase, ''a flight or multiple flights in a single duty period, the end result of which involves' crossing five or more time zones in one direction.

FAA Response: The FAA agrees with these commenters that the proposed definition was confusing. It has been redrafted to clarify that it is the time zone difference of 5 hours or more from the originating time zone that is of concern, because a time difference of that amount can affect a pilot's circadian rhythm. The FOARC recommended this additional provision. The FAA notes this provision is more restrictive than part 121 and 135 and will add complexity to the matrix of flight time and rest requirements. It should also be noted that most circadian rhythm issues involve not only the number of time zones crossed, but the time of day that the duty period begins.

Planned expanded duty. EJA believes that this phrase appears to be used in the NPRM to refer not only to planned expanded duty, but also to an expansion of flight time. The phrase as defined, and as used in the flight, duty, and rest tables, should be changed to ''planned expanded duty and flight time.'' The phrase ''long-range aircraft capable of exceeding 10 hours of flight'' is found within ''planned expanded duty,'' which should be clarified to indicate long-range aircraft capable of exceeding 10 hours of non-stop flight flown in accordance with part 91. Since ''planned expanded duty'' is used not only in proposed § 91.1059, dealing with unaugmented crews, but also in proposed § 91.1061, dealing with augmented crews, the definition should not be limited by the phrase ''unless the flightcrew is augmented by a third pilot.'' That limitation is inherent in proposed § 91.1059, and would conflict with proposed § 91.1061.

The EJA Master Executive Council Chairman notes that by allowing a ''planned'' expansion of duty, the FAA is granting fractional program managers carte blanche approval to operate ultra-long range business jets to the limits of aircraft endurance without putting a third crewmember on board. Owing to

the costs involved, program managers will never make use of a third flight crewmember unless obligated by regulations to do so.

IBT believes the proposed definition is incomplete. This commenter concurs with the proposal provided that this term requires an augmented crew. Also, insert ''cannot be scheduled'' between ''flight'' and ''unless.''

FAA Response: The FAA is reviewing the research on pilot fatigue and the use of ultra-long range aircraft and has determined that it is premature to establish a standard for the use of such aircraft with a crew of only 2 pilots. Therefore the definition of planned expanded duty and the limits for such duty in §§ 91.1059 and 91.1061 do not appear in the final rule. Instead the FAA is applying limits for augmented crews in § 91.1061 that are similar to those in § 135.269 for unscheduled 3- or 4-pilot crews. Currently the rest and duty requirements in parts 121 and 135 do not address the use of ultra-long range aircraft. The FAA has decided to defer a decision on appropriate rest and duty requirements for the use of such aircraft by fractional ownership programs until standards for parts 121 and 135 are developed.

Reserve and Standby. Kaiser Air, Inc. notes that ''reserve'' and ''standby'' are defined but then do not appear elsewhere in the proposed rule language. EJA Master Executive Council Chairman and Teamsters ask how the definition of ''standby'' differs from ''reserve'' and who arbitrates the assured conflicts between pilot and program manager? Another commenter notes that these two definitions are ambiguous. Both terms require the flight crew to be in a state of readiness to fly. However the reserve status, with an unlimited time associated with it, leaves excessive room for abuse and subjects crews to unreasonable periods where the pilot must be ready to fly. This time is not counted as a duty status.

A commenter believes that time spent on standby should be considered duty time. It is impossible to ensure adequate rest while on extended periods of standby, sometimes reaching lengths of several days. Often after long periods of standby time, crews are called out at any hour of the night. This situation is dangerous.

The EJA Master Executive Council Chairman believes that reserve is duty, stating that requiring a crewmember to ''hold himself or herself fit to fly,'' ''remain within a reasonable response time of the aircraft,'' and ''maintain a ready means whereby the flight crewmember may be contacted by the program manager'' is, by definition, duty. The commenter notes that FAA's own Chief Counsel's definition of duty reads, in part, ''having a present responsibility for work.'' The three conditions contained in the proposed definition certainly add up to a present responsibility for work.

The Teamsters state that the reserve status definition is not adequate because it does not provide for a known, protected rest period. There is no way a pilot can be on a reserve schedule, never knowing when the call will come, and be free from fatigue at the end of a possible 16-hour duty period.

A commenter notes that these proposed rules define ''reserve'' as not being part of duty. What this means to a pilot is that he/she could get up at 8 AM and be on reserve all day. At the end of that day the pilot could be called and required to show up for duty and begin a 14-hour or longer duty day. In this example a pilot could be operating an aircraft with no sleep in 29 or more hours. The commenter believes that although a pilot can refuse a trip when he or she is too tired, the pilot's employer can also refuse to keep the pilot employed for turning down a ''legal'' trip. A commenter agrees that it is not enough to say it's the pilot's decision, when a pilot is under pressure from Chief Pilots and Directors of Flight Operations.

Three individual commenters, including a flight operations manager, propose removing the definition of reserve status. Two of these commenters note that even if reserve status is not eliminated, the amount of time that one can spend on reserve status must be defined.

The flight operations manager suggests removing ''Reserve'' from the proposed regulation for both 91.1057 and 135. As defined in the proposed rule ''Reserve'' meets the FAA definition of duty. If considered duty it defeats the intent of Reserve, and therefore should be removed. The FAA General Counsel's definitions of rest, duty and circumstances beyond the control of the operator are clear and concise and should continue to be part of this rulemaking.

According to an EJA pilot, FOARC's definition of ''reserve status'' needs to be changed to be included in one's duty period. This proposed definition says reserve status is considered a part of the pilot's rest period. Yet, at the same time they define rest as being ''a period of time * * * that is free of all responsibility for work or duty prior to commencement of, or following completion of, a duty period, and during which the flight crew member cannot be required to receive contact from the program manager * * *.''

NWJ believes that incorporating the elements of extended and scheduled reserve as outlined in the NATA 135 On-Demand Concept Paper on Flight & Duty Time, would be of value. These elements empower the crew to refuse trips if they have not received sufficient sleep to safely conduct the flights.

IBT disagrees with the proposed definition and instead proposes that this term mean ''the assignment of a crewmember by the program manager to a standby status from which the crewmember may be assigned to flight duty. While in such status, the crewmember has a present or prospective responsibility for flight duty assignment.'' Reserve standby preceding a duty period should be included in the duty period on an hour for hour basis.

FAA Response: As defined, the term ''standby'' refers to flight crewmembers who are on duty while awaiting an assignment for a flight. The requirements for standby pilots are the same as those for pilots with flight assignments. All rest and duty requirements apply to standby flight crewmembers and therefore adequate rest is ensured before the duty period begins and after the duty period is completed and the length of the duty period is limited. Reserve pilots, on the other hand, are not on assigned duty for a program manager. They are awaiting their next assignment from the program manager. The final rule clarifies that a reserve assignment is also not considered rest. Although the proposed definition evidently did not make this clear, the rest requirements apply to reserve pilots, as well as to pilots with regular flight assignments.

Rest period. IBT concurs with the proposed definition but would place a period after ''manager'' and delete the rest of the sentence.

A flight operations manager believes the proposed regulation as written is correct in that it provides that a pilot receives consecutive hours of rest rather than uninterrupted rest as mentioned in the preamble. It is very important not to define rest as an uninterrupted period so that 135 Air Carriers and Fractional Ownership Managers are able to at least contact flight crews while in rest to advise them of a future assignment.

The Teamsters believe that a good model for a definition of rest is the definition in part 135's Flight Attendant Limitations section, which is very reasonable and conforms to both scientific research and common sense. The commenter thinks that FOARC presents a definition that almost conforms to the accepted FAA

definition, but then undermines that meaning with the definitions of reserve and standby.

FAA Response: The FAA agrees with the first commenter and has deleted the words ''for purposes of program operations'' from the definition. This change helps to clarify that the program manager may not contact the crewmember for any reason during the rest period, not even to advise them of a future assignment, as suggested by the second commenter. As explained under the discussion on reserve status, there is no conflict between the requirements for reserve and rest because a flight crewmember must be taken off reserve and given a rest period before reporting for an assignment involving flight time.

Section 91.1057(c)

According to EJA, this proposed section did not define ''program duty.'' This commenter recommends the paragraph be amended by removing ''program'' and inserting ''required by the program manager'' after ''duty.''

EJA thinks that the NPRM does not address the impact of program manager-assigned non-flying activities on the duty and rest provisions. While it is likely that FOARC and the FAA intended that this period of work may not be considered part of any rest period, the final rule should make this clear. Section 91.1057 should be amended by adding a new paragraph to read as follows: § 91.1057(k) Assignments of duty made by the program manager that do not involve flight time will not be considered part of any required rest period.

FAA Response: The FAA agrees with these commenters and has changed ''program duty'' to ''duty'' to clarify that the program manager may not assign any kind of duty during a required rest period.

Section 91.1057(d)

EJA believes that while this section adequately addresses the issue of a program manager deadheading a flight crewmember at the start of the duty period, it does not address the deadheading of a flight crewmember to his home base at the completion of the duty period. Because of the unpredictability of airline schedules, the program manager should be given the flexibility to use the post-duty period to deadhead flight crewmembers to their home base. Since the flight, duty, and rest provisions are safety-related provisions, and since the flight crewmember's duty has concluded and the flight crewmember will be given all appropriate rest before the initiation of his next duty period, there are no adverse safety consequences to excluding post-duty period deadheading to home base from these regulations.

An EJA Pilot believes the proposed definition of ''local in character'' needs to be qualified, so flight crewmembers are not subject to unsafe extensions to either side of their duty periods when traveling to/from the airport. Current interpretations vary greatly among supervisors as to what is considered ''local,'' suggesting a definitive time line. Driving to the hotel from the airport or vice versa has varied from 5 to 45 minutes.

FAA Response: Post-duty deadheading is included in § 91.1057(d). Program managers may deadhead flight crewmembers back to their home bases, but that time cannot be included as part of the rest period. Frequently pilots for fractional ownership programs are flown commercially to be in position for a flight assignment. Whether such a flight occurs before or after a duty period, it may not be counted as part of the rest period. The FAA is aware of the problem of ''local'' transportation to and from the airport to distant hotels and reminds program managers that they must allow time for crewmembers to obtain the required rest.

Section 91.1057(h)

EJA thinks that the phrase ''extension of planned duty or flight time'' may be confusing when used in connection with planned expanded duty.

FAA Response: Since the concept of planned expanded duty has been removed from the final rule, the words ''duty or'' have been removed from § 91.1057(h).

Section 91.1059 Flight Time Limitations and Rest Requirements: One or Two Pilot Crews &

Section 91.1061 Augmented Flight Crews

EJA states that some of the limitations in proposed §§ 91.1059 and 91.1061 should be amended to reflect the capabilities of newer, long-range business jets. For instance, while the proposed rule allows flight time up to 12 hours, the newer generation jets have a realistic range able to accommodate flight times in excess of 14 hours. To use safely the 14+ hours of potential flight time, the flight crew will conceivably require a 16–20 hour duty period. Similarly, to use safely the 16 hours of flight time, the flight crew will conceivably require up to a 20-hour duty period. To allow for this length of duty period, additional requirements must be satisfied. The minimum crew rest period before any planned duty period of 16 or more hours should be increased from 10 hours to 18 hours. The flight crew would be limited to three scheduled landings during the 16 or more hour duty period, limiting exposure to the high workload environment of takeoffs and landings. Further, the minimum post-duty rest would be increased from 10 hours to 18 hours for 14–16 hours of flight time and 24 hours for 16 or more hours of flight time. Creating these additional requirements ensures that the flight crew will be adequately rested before and after the flight.

An EJA Pilot states that pilot fatigue has contributed to several aviation accidents, specifically American Airlines Flight 1420, which could have been avoided if the pilots had been more alert on the flight deck. The commenter believes the proposed flight, duty, and rest requirements are not safe and that we need to limit duty periods to 10 hours for a normal duty day and to 12 hours for an extended duty day. Similarly, a commenter believes that 16 hours is too long. He has worked many 14-hour days and believes that this is the maximum safe workday limit.

An individual commenter suggests rewriting § 91.1059(c) by limiting duty time to 12-hour with an extension to 14; by augmenting crews if there is more than 8 hours of flight time; and that for duty between 11 p.m. and 6 a.m., there should be a maximum flight time of 8 hours with 10 hours of duty.

IBT proposes in lieu of FOARC's recommendations that there be no extension of the 14-hour duty day and no extension of the 8-hour flight time limit.

A commenter makes the following suggestions. First, duty times should be a maximum of 12 hours extendable to 14 hours, instead of the proposed 14 hours extendable to 16 hours. Aircrews, currently operating under similar regulations, have stated that fatigue starts to set in insidiously after this period. Second, flight time should be a maximum of 10 hours or even reduced to 8 hours to meet FAA part 121 limitations. Fractional operators are often involved in flying into and out of unfamiliar airports which requires a consistently high state of alertness and readiness. To require or set such high duty times (14 hours or greater) and flight times (10 hours or greater) places an unrealistic burden on flight crews and may compromise safety.

Kaiser Air, Inc. notes that the duty time limits in § 91.1061 appear to be a range of 14–16 hours and 16–18 hours rather than a limit. This needs

clarification since a limit would not have a range.

EJA states that ''assign'', as used in § 91.1059(c), should be changed to ''permit'' since it would not be possible to ''assign'' an extension of normal duty, which is, by definition, an unplanned event. For ease of use, the table should also be revised to include the one-pilot requirements addressed in paragraph (b)(1). Also, the final rule should include information in § 91.1061 on when and how an augmented rule would be used. Additionally, the table in proposed § 91.1061 should address an extension of normal duty, since this concept would apply to augmented crews, just as it applies to unaugmented crews (for example, in proposed § 91.1059).

The Teamsters suggest that § 91.1061 contain additional language to specify which aircraft can be augmented, establish per pilot limitations, and require adequate rest facilities onboard the aircraft.

IBT suggests that proposed § 91.1061 be changed to provide a maximum actual duty time of 14 consecutive hours and a maximum actual flight time of 12 hours.

FAA Response: As discussed above under ''planned expanded duty,'' the FAA has reviewed the research on pilot fatigue and the use of ultra-long range aircraft and has determined that it is premature to establish a standard for the use of such aircraft with a crew of only 2 pilots. Therefore the definition of planned expanded duty and the limits for such duty in §§ 91.1059 and 91.1061 do not appear in the final rule. Instead the FAA is applying limits for augmented crews in § 91.1061 that are similar to those in § 135.269 for unscheduled 3- or 4-pilot crews.

In addition the tables have been changed in other ways in response to the comments and to make the tables consistent with the other requirements. Also, additional language has been added to § 91.1061 to specify the requirements for augmented crews. These are based on the comparable requirements in § 135.269 for unscheduled 3- and 4-pilot crews.

The FAA believes that the flight, duty, and rest requirements in the final rule are comparable to the variations suggested by several of the commenters. Following the issuance of the final rule, the FAA will closely monitor the implementation of the flight, rest, and duty rules by fractional ownership program managers, will continue to review the scientific literature on fatigue in aviation operations, and will revisit the appropriateness of these rules at the time that the FAA considers revisions to flight, rest, and duty rules for part 121 and part 135 operations.

Section 91.1063 Testing and Training

EJA comments that proposed § 91.1063(d)(8), which defines ''requalification training'' to include training required because of a lapse in recurrent pilot testing requirements and instrument proficiency requirements, should also include a lapse in recurrent pilot training requirements or competency check requirements.

The Teamsters state that proposed §§ 91.1063 through 91.1115 would not be needed if the FAA simply regulated fractional operators under part 135, where most of these sections are copied from.

FAA Response: The FAA agrees with EJA and has changed § 91.1063(d)(8) in the final rule to specify that requalification training is necessary for crewmembers who have become unqualified by failing to comply with recurrent training, proficiency checks, or tests for pilots and with flight attendant testing requirements, if applicable, within the appropriate time period.

Although it is true that the proposed training and testing requirements for fractional ownership programs are modeled on those for on-demand operators in part 135, it is important for them to appear in part 91, subpart K, where they can be tailored to be appropriate for fractional ownership programs. As discussed above under ''General Opposition,'' the FAA has determined that subpart K is the appropriate regulatory approach for this segment of aviation.

Sections 91.1065, 91.1067, 91.1069, 135.293 and 135.297 Initial and Recurrent Pilot and Flight Attendant Testing Requirements and Instrument Proficiency Check Requirements

NATA and Flexjet strongly support the NPRM's provisions permitting the required flight training portion of any of the pilot training or check requirements of this subpart, including the initial, transition, upgrade, requalification, differences, or recurrent training, or the accomplishment of a competency check or instrument proficiency check, to be conducted in a simulator.

EJA states that proposed §§ 91.1065(a) and 91.1069(d) should be clarified to ensure that it is understood that a written test, an oral test, or a combination of both types of test will satisfy the requirements. EJA also recommends that proposed §§ 91.1065(b) and 91.1069(e) make clear that (1) not all of the maneuvers and procedures required for the original issuance of the particular pilot certificate are required to be included on the competency check, (2) not all of the procedures required for an air transport pilot certificate must be included on the instrument proficiency check for a pilot in command of an aircraft, and (3) not all of the procedures required for a commercial pilot certificate must be included on the instrument proficiency check for a pilot in command of a rotorcraft or a second in command of an aircraft. In keeping with FAA Policy Memorandum #183, not all maneuvers required for the original issuance need to be accomplished during an instrument proficiency check.

PASS believes that the flight crew instrument proficiency check requirements in proposed § 91.1069 should be the same as those specified for part 121 or 135 operations.

A pilot comments that a basic premise of this NPRM is the adoption of industry best practices and equivalent levels of safety. Currently, part 121 air carriers and part 91 operators, but not part 135 operators, may conduct progressive checking. That is, a maneuver successfully accomplished during training need not be repeated during a separate checking event. This commenter states that it is unclear whether subpart K makes provision for progressive checks or not. This commenter believes that allowing progressive checking for part 135 and subpart K would embrace industry best practices (part 91), enhance pilot training and safety, and provide appropriate equivalent standards between parts 121 and 135.

FAA Response: The FAA agrees with the EJA comment on §§ 91.1065(a) and 91.1069(d) and has changed the final rule language in both sections to make it clear that the required tests can be either written or oral, or a combination of written or oral.

In response to PASS's comment on instrument proficiency check requirements, the proposed and final rule language does impose the same instrument proficiency check requirements as for parts 121 and 135, except that the requirements for SIC's are more restrictive under subpart K than for SIC's under part 135. An editorial change is being made to the rule language to clarify that the requirements apply to a pilot in command of an aircraft that requires the PIC to hold an ATP and to a second in command of an aircraft that requires the SIC to hold a commercial pilot certificate.

The kind of progressive checking referred to by one commenter is

presumably the kind of checking allowed in an Advanced Qualification program under SFAR No. 58 for certificate holders operating under parts 121 and 135. This kind of program is not available to persons operating under part 91 and this issue was not focused on by the FOARC or by the FAA before the NPRM was issued. Therefore, the FAA believes it is beyond the scope of this rulemaking.

Section 91.1071 Crewmember Tests and Checks, Grace Provisions and Training to Accepted Standards

PASS believes that additional language should be added to proposed § 91.1071 that states that if an airman fails a check and is currently an employee of another certificate holder (that is, parts 121, 125, 135), he or she must notify that company and not be allowed to function in a commercial capacity as an airman, until the check failed is subsequently passed.

FAA Response: The final rule has been changed to add the notification requirement; however, the FAA cannot address qualifications as an airman under parts 121 or 135 in this rulemaking.

Section 91.1073 Training Program: General

EJA states that proposed § 91.1073 should be clarified so that the grace period applies to all tests, flight checks, and proficiency checks, and not just to recurrent training.

FAA Response: The grace period that applies to tests, flight checks, and proficiency checks appears in § 91.1071(a).

Section 91.1075 Training Program: Special Rules

Alpha Flying states that proposed § 91.1075(b) could lead to an interpretation that only a part 142 certificated training center could be used as a contractor for training. The Pilatus PC–12 is one aircraft for which there is no part 142 training center. Alpha believes that it was not the intent of the FOARC to prohibit the program manager from conducting training (under subparagraph (a)), using the services of a professional training center for portions of the training, if approved by the FAA inspector with jurisdiction over the management specifications. It would be in the interest of air safety to have a recognized professional program fulfill the requirements of § 91.1075 even if not part 142 certificated, if equivalent training effectiveness could be demonstrated to the satisfaction of the FSDO.

FAA Response: The FAA agrees with this commenter and has changed the final rule to add a deviation clause that allows for the use of a training center that is not certificated under part 142 if approved by the Administrator. The FAA has made other changes in the final rule to clarify that a program manager may also use the services of another program manager or of a part 119 certificate holder.

Section 91.1087 Approval of Aircraft Simulators and Other Training Devices

Flexjet notes that, if a program manager or its affiliate also conducts parts 121 or 135 operations and has an approved training manual with approvals for aircraft simulators or other training devices, those same approvals should be carried over to meet the part 91 subpart K requirements.

FAA Response: The FAA agrees with this comment. The changes to § 91.1075 in the final rule will allow for this.

Sections 91.1089, 91.1091, 91.1093, 91.1095 Qualifications and Initial and Transition Training and Checking: Check Pilots and Flight Instructors

EJA believes that proposed §§ 91.1089 and 91.1091 should have a provision similar to that in § 91.1063 that would allow a check pilot or flight instructor used by a program manager who is also a certificate holder under part 121 or 135 to be used under subpart K without additional training or testing. Flexjet makes a similar comment.

FAA Response: The FAA agrees that a check pilot or flight instructor used by a program manager who is also a certificate holder under part 121 or 135 may be used in subpart K operations. The language of § 91.1063 is broad enough to cover these sections as well. However, the FAA would want to ensure that the training and testing program elements are the same for both the fractional program and the part 121 or 135 operation. Where there are differences in the training and testing provisions of these programs, the check pilot or flight instructor must be trained and tested with respect to those differences.

Section 91.1101 Pilots: Initial, Transition, and Upgrade Ground Training

EJA states that proposed § 91.1101 was adopted from current § 135.345, but that § 91.1101 does not include the requirement that initial, transition, and upgrade ground training must include training on ''the approved Aircraft Flight Manual or equivalent.'' EJA believes this phrase should be added to § 91.1101.

FAA Response: The commenter is correct. The phrase has been added to § 91.1101(b)(11) in the final rule.

Section 91.1109 Aircraft Maintenance: Inspection Program

PASS believes that a new section should be added to delineate the responsibility for the airworthiness of the aircraft, specifying that the responsibility for the airworthiness of the aircraft should be shared by each fractional owner and the program manager. Also, this commenter believes that no program manager should use any person to perform required inspections or maintenance unless the person performing the inspection or maintenance is appropriately certificated, trained, qualified, and authorized to do so.

EJA and an individual commenter believe that as written, proposed § 91.1109 could be interpreted to require the development of a completely new inspection program. They believe that the final rule should clarify that the intent is to allow program managers to develop their inspection programs from portions of existing manufacturers' or certificate holders' inspection programs, or to use a manufacturer's or certificate holder's program in total. Similarly, it should make clear that compliance with current § 91.409 is also acceptable, as well as that currently used forms would still be acceptable.

Thus, this commenter states that when the program manager derives the inspection program from the manufacturer or certificate holder, it would then become the program manager's inspection program and require approval from the FAA for both the program and the use of the program. However, if the program manager elected to use the manufacturer's or certificate holder's inspection program in total, the program manager would request approval from the FAA to use the inspection program, but the inspection program itself would remain controlled by the manufacturer or certificate holder. To clarify this intent, ''derived'' should be replaced with ''derived or adopted.'' For clarity, ''area in which the aircraft is based'' should be replaced with ''program manager.'' Program managers will manage the aircraft inspection programs.

NATA and Flexjet state that it was the FOARC's intent to allow the use of continuous airworthiness maintenance programs and continuous airworthiness inspection programs under proposed subpart K. To make this clear they recommend a total rewrite of proposed § 91.1109 and also amendment of

numerous related sections throughout 14 CFR.

According to EJA, proposed § 91.1109 requires the ''operator or program manager'' to establish an aircraft inspection program. Since the NPRM requires the owner and program manager be jointly responsible for the airworthiness of program aircraft, this commenter recommends that § 91.1109 refer to the ''owner or program manager.''

FAA Response: A new section specifying the responsibility for airworthiness, as suggested by PASS, is not necessary because this topic is covered by § 91.1011, which addresses the shared responsibilities of the owner and the program manager for compliance with all applicable requirements of this chapter, ''including those related to airworthiness.'' Likewise, it is not necessary to require in subpart K that persons performing required inspections or maintenance be appropriately certificated and qualified, because that topic is covered by part 43.

The commenters' concern that § 91.1109 could require the development of a completely new inspection program is incorrect, because paragraph (b) clearly states that the program must be derived from an existing program, which may be the program recommended by the aircraft manufacturer. The word ''derived'' is more appropriate than ''derived or adopted'' because the manufacturer's program alone may not be adequate for a particular operation. Also, the program must include any maintenance instructions in STC's for any modifications that were made to the aircraft. For these reasons, the program manager needs to present the aircraft inspection program to the FAA for review and approval.

In response to the comment about the use of continuous airworthiness maintenance programs (CAMP), the commenters are correct that the proposed rule language did not fully authorize the use of a CAMP to the inspection program within a CAMP. Although § 91.1109, as proposed, would allow ''An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier or operating certificate issued under part 119 of this chapter and operating that make and model aircraft under part 121 or 135 of this chapter'' the FAA agrees that this option should be expanded in the final rule. The final rule has been rewritten, new §§ 91.1411–91.1443 have been added (based on subpart J of part 135), and editorial and applicability changes to other sections, including § 91.401, have been made to allow the use of a complete CAMP in a fractional ownership program. Fractional ownership program managers who elect to provide maintenance under a CAMP must meet maintenance requirements that are equivalent to those that part 121 and 135 operations that have a CAMP must meet. These include reporting requirements, mechanical interruption summary reports, service difficulty reports, employment of a Director of Maintenance and Chief Inspector, required inspection personnel, continuing analysis and surveillance program, maintenance recordkeeping requirements, and the use of airworthiness releases. With the use of a CAMP, the program manager will realize many of the same benefits that current part 121 and 135 operators have, such as continuing authorization to issue special flight permits as per § 21.197 and the use of reliability programs.

As noted by a commenter, the reference to the ''operator or program manager'' is incorrect. Although the owner is ultimately responsible for safe operations, the final rule refers only to the program manager, because it is the program manager who is delegated responsibility under §§ 91.1023 and 91.1025 for the program operating manual, which contains the approved aircraft inspection program. Also the phrase ''area in which the aircraft is based'' has been changed to clarify that the inspection program is approved by the FSDO that issued the management specifications.

Section 91.1111 Maintenance Training

EJA states that proposed § 91.1111 uses the same terminology as the equivalent provisions for crewmember training, which could lead to confusion due to the defined terms used for crewmember training, and the differing training requirements used for maintenance personnel. EJA states that using slightly different terminology will help ensure that the requirements are not confused. Specifically, EJA proposes that such personnel be required to ''undergo appropriate training prior to exercising those responsibilities'' instead of being required to ''undergo appropriate initial and annual recurrent training.'' EJA also recommends adding, ''The program manager shall ensure that these personnel undergo annual refresher training, as applicable.''

Similarly, NWJ and an individual comment that the requirement for maintenance personnel to ''undergo appropriate initial and annual recurrent training * * *'' may be too broad a statement. If the intention is that several types of training may be ''appropriate'' (that is OJT, formal, classroom, etc.) then that should be specified. If the intention is that maintenance personnel attend formal maintenance training annually, such as Flight Safety, then a twelve-month frequency may be excessive. A more appropriate frequency would be twenty-four months.

PASS believes that maintenance personnel should be certificated and qualified in accordance with part 65. Maintenance training should be documented in a training file for each employee of the program management company and available to the Administrator for inspection.

FAA Response: The commenters' concerns about this section are unwarranted. The initial and recurrent training would be specific to the aircraft type and appropriate in content and length for the responsibilities of the maintenance personnel being trained. This training can be conducted using a variety of methods, including classroom training, on-the-job training, individual instruction, etc. Certification and qualification under part 65 would be a prerequisite to performing maintenance responsibilities. The FAA is developing guidance on training for maintenance personnel that will specify what training programs would be considered adequate and will recommend recordkeeping standards to help inspectors evaluate the adequacy of the training programs on an ongoing basis.

Section 91.1115 Minimum Equipment Lists and Letters of Authorization

PASS believes that a statement needs to be added to this section that the Administrator will approve or deny any Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, Deferred Discrepancy Lists or any other approvals covering the program aircraft.

EJA states that the proposed rule does not address the use of a minimum equipment list or configuration deviation list as envisioned by the FOARC. The preamble states that ''The FOARC recommended that approvals for fractional ownership operations (such as MEL's, RVSM (reduced vertical separation minimum airspace), manual reviews and maintenance programs) be conducted through a process similar to part 135 and/or part 121 processes and procedures, as appropriate''. EJA states that a new section should be added to mirror § 135.179 and a conforming amendment should be made to § 91.213. Additionally, program managers who also hold a part 121 or 135 certificate should be permitted to use the MEL's/

CDL's approved for those operations, as applicable.

FAA Response: The FOARC recommended and the FAA agrees that a process similar to that used for part 121 and 135 operators should be used to approve operations documents, authorizations, and approvals. Specific sections in subpart K refer to those items that must be approved or accepted by the FAA. The actual approval will be given to the program manager on behalf of the fractional owners. The specific approval processes and procedures will be in guidance documents that will be completed on the effective date of this rule. The guidance will reflect a level of oversight and approval that is equivalent to that provided to part 121 and 135 operations.

The FAA also agrees that proposed § 91.1115 does not adequately describe the procedures and approvals needed for operating an aircraft with inoperable instruments or equipment. As suggested, the final rule replaces the proposed language with a new section modeled on § 135.179. The proposed language stating that all approvals, including MEL's, are issued to the program manager and are not affected by changes in ownership has been included in § 91.1011(b). The new section also specifies that aircraft covered by an MEL for part 121 or part 135 operations must not have a separately approved MEL under subpart K, because the FAA issues only one MEL for each aircraft. If the aircraft is used under part 121 or 135, the MEL would be issued under that part.

The FAA agrees with the suggestion by EJA that § 91.213(c) should refer to part 91, subpart K, and has made this change in the final rule.

Part 91, Appendix G Reduced Vertical Separation Minimum Airspace

EJA states that, since Reduced Vertical Separation Minimum (''RVSM'') standards may be used by fractionally-owned aircraft, Appendix G to part 91 should reflect the existence of part 91, subpart K.

FAA Response: The FAA agrees with the EJA and has amended appendix G in the final rule to include references to subpart K in sections 3(a) and (3)(b) and in the introductory paragraph to section 7.

Part 135

Applicability

EJA states that the reference to §§ 91.1053 and 91.1055 in proposed § 135.1(b) may create confusion that will require interpretation by the Administrator and/or the certificate holder to determine applicability. There is a high likelihood that those interpretations might be different. A simpler and clearer solution would be to revise § 135.99 to include the applicable requirements of §§ 91.1053 and 91.1055 using the terminology of part 135.

NATA believes that it was the intention of the FOARC to require eligible on-demand operators to have two-pilot crews when exercising the privileges of an eligible on-demand operator. While the proposed regulations require compliance with the more stringent pilot experience and crew pairing requirements, a two-pilot crew is not specifically required. Proposed § 91.1049 (d) requires two-pilot crews in fractional program operations. Therefore, to fulfill the intent and spirit of the FOARC, NATA recommends amending proposed § 135.1 to specifically include a reference to the flight crew complement requirements of § 91.1049.

NATA also notes that the FAA's ability to grant deviations from certain requirements where appropriate based on the size and complexity of the operation or other relevant factors was critical to the FOARC deliberations. This commenter believes that it was FOARC's intent to provide access to these same deviations for part 135 operators to the extent that they are present in proposed §§ 91.1049(d), 91.1053 and 91.1055.

Kaiser Air, Inc. states that for clarification the language in § 135.1(b) should emphasize an eligible crew rather than eligible operator. An eligible operator may have several crews that may or may not be eligible themselves. Furthermore, Kaiser states that § 91.1055(c) should not be applicable to ''Eligible On-Demand Operators.'' Kaiser states that it is not a part 135 requirement now and is onerous to be added to the eligibility requirements. Kaiser questions how this rule would be interpreted and asks for clarification on whether paragraph (c) applies to SIC's, who do not require a type rating.

FAA Response: The FAA agrees that the proposed change to § 135.1 did not clearly spell out the requirements that apply to eligible on-demand operators. In the final rule, these requirements have been moved to a new § 135.4 that describes, rather than cross-referencing, the attributes of eligible on-demand operations, including the requirement for a two-pilot crew. Section 135.4 incorporates the requirements of §§ 91.1049(d), 91.1053, and 91.1055, including the provision for deviations, that part 135 operators must comply with in order to be eligible to conduct operations using the same standards for the instrument approach procedures that fractional ownership programs will follow.

Section 135.247 Pilot Qualifications: Recent Experience

Kaiser Air, Inc. supports the proposed changes to § 135.247, but is concerned that the words ''each airplane'' and ''that airplane'' will be misinterpreted as meaning the specific serial numbered aircraft, rather than by category, class, and type. Similarly, the rule should state whether ''* * * more than one crewmember'' is required by type design or by operating rule.

FAA Response: The FAA agrees with these comments and has changed the final rule to clarify that the requirements of paragraph (a)(3) apply to airplanes that are *type certificated* for more than one pilot crewmember and to pilots qualifying in each airplane *type*.

Section 135.299 Pilot in Command: Line Checks

NATA strongly endorses an amendment to § 135.299 that would establish an alternate means of compliance with the regulation by permitting certificate holders to utilize simulation technologies. § 135.299(a) requires each pilot to pass a flight check annually. NATA believes that a well run line check program can provide detection of deficiencies and adverse trends and establish the need for a revision of old procedures or an initiation of new procedures by the certificate holder. Further, NATA believes that current simulation technology can provide a checking environment that would afford a level of safety equal to that currently provided by § 135.299.

The majority of the § 135.299 line checks conducted in on-demand air carrier operations are on flights that are dispatched for the sole purpose of accomplishing that check. Unlike scheduled air carrier operations conducted under part 121, where these checks are conducted during revenue operations, the on-demand operator must bear the total cost of the check. This puts the on-demand carrier at an economic disadvantage. Additionally, there is no line check requirement for any aircraft operated under part 91.

NATA believes that crews professionally trained in the operationally realistic environment of advanced simulation, and comprehensively checked in ways not possible in the airplane, are better disciplined and better prepared to meet the challenges of flight than those trained in airplanes.

Similarly, a pilot comments on the expense of the line check, which he believes does not effectively check competency. He proposes that it either be abolished or that the focus of the check is shifted away from basic airmanship to quantifiable human factors issues with the opportunity to provide a somewhat non-threatening environment where the pilot being checked has the chance to enhance his understanding of, and proficiency with, company standard operating procedures, human factors skills, *etc.*

FAA Response: While there is some merit to the arguments presented on the line check requirements under part 135, this issue was not addressed in the NPRM process and therefore is beyond the scope of the proposed changes and cannot be resolved in the final rule.

Miscellaneous

EJA states that throughout part 61, individual pilots are allowed to satisfy basic training, checking, proficiency check, and other similar requirements by satisfying requirements completed under air carrier training programs. EJA recommends that these sections should be amended to give comparable credit for satisfying parallel requirements under part 91, subpart K. The sections that EJA cites are §§ 61.55(d), 61.57, 61.58, 61.63, 61.157, and 61.159.

Similarly, EJA recommends that §§ 91.189 and 91.191 should be amended so that category II and III operations will be approved through Management Specifications and training and manual requirements will be met through part 91, subpart K.

This commenter also points out that if another rulemaking becomes final, first it will be necessary to include references to the ''Decision Altitude'' in proposed §§ 91.1039(c) and 91.1101(a)(7).

FAA Response: The FAA agrees with these comments because the training, testing, manuals, and approval processes in subpart K of part 91 are equivalent to those in parts 121 and 135. The FAA has made changes to the final rule to insert references in part 61 (except for § 61.57) to give credit for training and checking requirements accomplished under part 91, subpart K, and in §§ 91.189 and 91.191 to allow for approval of category II and III operations through part 91, subpart K, Management Specifications. Also the term ''Decision Altitude'' has been substituted for ''decision height'' wherever it appears. The FAA did not change § 61.57 because subpart K does not contain recent experience requirements and therefore, subpart K pilots must follow the § 61.57 requirements.

Beyond the Scope

An individual commenter recommends that the complete text of §§ 135.89, 135.93, and 135.100 should be included within new subpart K.

NATA recommends that a new section be added (§ 91.1043 Aircraft requirements) to allow the use of aircraft registered in other countries but are legally permitted to operate in this country in fractional owner programs. This commenter proposes language that would require the aircraft to be registered in a country that is a party to the convention on International Civil Aviation and to meet other requirements.

Eclipse Aviation notes that scheduled operations under part 135 require, pursuant to part 119, part 25 certificated aircraft for turbo-fan operations. This is in contrast to the fact that piston propeller and turboprop aircraft, that are not certified under part 25, may be utilized in scheduled part 135 operations. Certainly, when part 119 and its related safety concerns were formulated, aircraft such as the Eclipse 500 did not exist. Clearly, this commenter believes, the equipment and performance safety considerations that influenced the part 25 requirement for turbo-fan aircraft utilization in scheduled part 135 operations have merit. However, the level of safety that is available from a turbo-fan aircraft, featuring state-of-the-art digital avionics, offers an order of magnitude improvement in safety over most, if not all, of the piston propeller and turboprop aircraft that may currently be utilized in scheduled part 135 operations. Eclipse requests that part 119 requirements concerning scheduled part 135 operations be evaluated in light of the new generation of personal turbo-fan aircraft that will appear on the aviation market over the next few years.

FAA Response: All of the issues above merit consideration, but they were not addressed in the NPRM, and therefore are beyond the scope of issues that can be addressed in the final rule without additional notice and comment.

Fractional owner program managers are encouraged to follow the standards in §§ 135.89, 135.93, and 135.100 for the use of oxygen and autopilots and for crewmember duties, especially if the program manager also conducts operations under part 135. However, it needs to be clearly specified in the manual and training program which regulations and procedures are being followed.

NATA's proposal to allow foreign registered aircraft to be operated in fractional owner programs has implications relating to citizenship and registration requirements that would require further study and future rulemaking, if warranted.

The FAA agrees that the introduction of the Eclipse 500 will require the agency to reevaluate which operating requirements would be most appropriate for that airplane. At that time FAA will determine whether rulemaking is necessary.

Minor Conforming Changes

The FAA finds it necessary to make minor changes by adding two rule sections not presented in the NPRM: Sections 21.197 (ferry flights) and 91.401 (applicability). In the case of 21.197, the change gives program managers the same authority, to conduct ferry flights for the purpose of maintenance, as is currently held by part 121 and 135 operators who operate under continuous airworthiness maintenance programs. The change to section 91.401 will add part 91, subpart K management specifications holders to those who operate under a continuous airworthiness maintenance program and thus do not have to comply with certain maintenance sections of part 91.

Paperwork Reduction Act

The amendment to 14 CFR part 91 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule were submitted to the Office of Management and Budget (OMB) for review.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), 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 number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

Overview

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade

Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the proposed rule (1) has benefits that do justify its costs, is not ''a significant regulatory action'' as defined in the Executive Order, and is ''significant'' as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket and are summarized below.

Background

In October 1999, the FAA convened the Fractional Ownership Aviation Rulemaking Committee (FOARC) to address the issues surrounding the regulation of fractional aircraft ownership program operations. On February 23, 2000, after extensive discussions, and a review of all comments received from the public and operators, the FOARC presented rulemaking recommendations to the FAA. These recommendations formed the basis of the Notice of Proposed Rulemaking (NPRM) entitled ''Regulation of Fractional Aircraft Ownership Programs'' (66 FR 37520, July 18, 2001). Comments were to be received by October 16, 2001 but in response to several requests, the comment period was extended to November 16, 2001.

Since the inception of the fractional aircraft ownership program concept in 1986 the number of fractional aircraft ownership program aircraft has increased substantially. As of early 2000, the leading fractional aircraft ownership programs managed approximately 465 aircraft on behalf of 3,446 shareholders and at the end of 2001 there were more than 3,500 shareholders with almost 5,000 shares of more than 650 aircraft. Growth in fractional aircraft ownership programs is expected to continue.

The final rule is expected to impose a total estimated cost of approximately $133.2 million ($85.8 million, discounted) on fractional operations, eligible on-demand air charter operators, and the FAA over the 15-year period from 2003 to 2017. Fractional aircraft ownership operations are expected to incur approximately $47.4 million ($35.2 million, discounted), of these total costs complying with the regulatory requirements. Eligible on-demand part 135 air charter operators would incur compliance costs of approximately $83 million ($48.3 million, discounted) of these total costs. The FAA is expected to incur estimated costs of approximately $3.1 million ($2.3 million, discounted), administering the rule.

Comments

Some 231 entries (including some duplicates) were received in response to the NPRM. Three organizations endorsed the FAA's initial regulatory evaluation and one individual expressed concern about the possible economic impact of adopting subpart K. No commenters directly addressed specific proposed costs or revenue opportunities contained in the preliminary regulatory evaluation. The National Air Transportation Association (NATA) stated ''that the FAA's regulatory and economic evaluations are accurate and valid''. It continued: ''NATA, as the representative of many of the entities that will be directly regulated by the proposed regulation, agrees with the FAA's conclusion that the benefits of the proposed regulation justify its costs, that the regulation will not have a significant impact on a substantial number of small entities, and that the regulation will not create a barrier to international trade''. Bombardier Business Jet Solution (Flexjet) stated; ''Flexjet supports the FAA regulatory and economic validity in the NPRM'' and also included NATA's additional comments supporting the FAA's regulatory flexibility determination and trade impact assessment. Executive Jet Aviation (EJA) stated, that as a member of NATA's Fractional Aircraft Business Council, it ''strongly supports all of the general and specific comments on this NPRM ''provided by NATA. An anonymous commenter stated his or her belief ''that the proposed subpart K could have an unintended, detrimental economic effect on the business aviation industry without an appreciable increase in safety.'' The commenter continued ''that the existing part 91 rules, along with the arms-length contracts between informed fractional owners and program managers, allow market forces to create the most efficient and appropriate safety-to-cost ratio.'' While the commenter addressed various sections of the proposed rule, he/she did not challenge specific proposed cost estimates. In view of the lack of any specific cost data submitted by the commenter, the FAA cannot address these comments.

NATA noted in a second filing that ''the issuance of the rule likely will have virtually no effect on the level of operations by aircraft in fractional ownership programs, since the rule was drafted to reflect the practices of the current fractional ownership program operations. Rather, the growth of fractional ownership programs over the past two decades has been, and will continue to be, attributable to American-style business innovation, changes in the economy, and increases in the perceived benefits of traveling by private aircraft.''

Fractional Aircraft Ownership Operations Compliance Costs

Certain sections of the proposed rule are expected to impose compliance costs on fractional aircraft ownership operations. The FAA has analyzed these costs for a 15-year period, from 2003 through 2017. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs are expressed in 2001 dollars. These compliance costs are summarized below.

Sections 91.519 Passenger Briefing, and 91.1035 Passenger Awareness

A fractional aircraft ownership program entity operating under part 91, subpart K will incur a one-time cost of $105 for every aircraft for briefing cards plus an annual cost of $85 for every aircraft to comply with the briefing requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership operations collectively will incur compliance costs of approximately $880,000.

Section 91.1003 Management Contract Between Owner and Program Manager

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs represented by attorney fees of $525 and sundry expenses of $20 for each shareholder to comply with the requirement of the rule. Over the 15-

year period from 2003 to 2017, fractional aircraft ownership operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $152,000.

Section 91.1013 Owner's Operational Control Responsibilities

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $40 to brief each owner on the owner's operational control responsibilities upon signing an initial contract and upon renewal which is generally every 5 years. Over the 15-year period from 2003 to 2017, fractional aircraft ownership operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $921,000.

Section 91.1015 Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $125,400 in the first year of operation and $6,270 annually in subsequent years to comply with this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $2.2 million.

Section 91.1017 Amending Program Manager's Management Specifications

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $155 annually to comply with this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $20,000.

Section 91.1021 Internal Safety Reporting

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $430 in the first year of operation only. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $5,000.

Section 91.1023 Program Operating Manual Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $10,450 in the first year of operation only. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $125,000.

Section 91.1027 Recordkeeping [1]

A fractional aircraft ownership program entity operating under part 91, subpart K will incur initial compliance costs of $5,250 in the first year of operation only to establish a recordkeeping system. In addition, each entity will incur an annual cost of $210 to maintain each pilot's records including tracking flight and duty time and an additional $680 to prepare a load manifest for each flight. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $15.3 million.

Section 91.1029 Flight Locating Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $210 in each year to prepare flight locating information for each flight that is not on an FAA flight plan. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $27,000.

Section 91.1033 Operating Information Required

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $345 in the first year of operation to develop cockpit checklists. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $44,500.

Section 91.1035 Passenger Awareness

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $85 per aircraft annually to provide briefings. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of approximately $791,000.

Section 91.1041 Aircraft Proving Tests

An existing fractional aircraft ownership program entity operating under part 91, subpart K will incur demonstration costs of $2,000 in lieu of proving tests in the first year of operation to demonstrate their ability to conduct safe operations. New entities will incur compliance costs of $9,400 to operate a turbojet aircraft. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of approximately $68,000.

Section 91.1045 Additional Equipment Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $156,750 for 30 percent of the year 2003 fleet only, as subsequent aircraft will be appropriately equipped voluntarily by the manufacturer consistent with regulatory requirements and evolving technology. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $20.2 million.

Section 91.1047 Drug and Alcohol Misuse Education Program

A fractional aircraft ownership program entity operating under part 91, subpart K will incur negligible costs of $3.30 per shareholder to comply with this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $24,000.

Section 91.1049 Personnel

A fractional aircraft ownership program entity operating under part 91, subpart K will incur annual costs of $180 to publish monthly flight crewmember duty schedules. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $23,000.

Section 91.1051 Pilot Safety Background Check

A fractional aircraft ownership program entity operating under part 91, subpart K will incur a one-time cost of $4.50 to request personnel information for each pilot. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of approximately $17,000.

Section 91.1057 Flight, Duty, and Rest Time Requirements

A fractional aircraft ownership program entity operating under part 91, subpart K will incur recordkeeping costs

[1] Captures recordkeeping compliance costs attributable to §§ 91.1057 and 91.1061.

to comply with this requirement. These costs are captured in the analysis of § 91.1027.

Section 91.1059 Flight Time Limitations and Rest Requirements: One or Two Pilot Crews

A fractional aircraft ownership program entity operating under part 91, subpart K will incur limits on ultra-long range flights. The FAA has deleted the proposed planned expanded duty definition and the proposed limits for such duty in §§ 91.1059 and 91.1061 and instead is applying limits for augmented crews in § 91.1061 that are similar to those currently required in § 135.269 for unscheduled 3-or 4-pilot crews. The FAA estimates that this change will result in a cost of $1,600 for each ultra-long range flight. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $3.6 million.

Section 91.1061 Augmented Flight Crews

A fractional aircraft ownership program entity operating under part 91, subpart K will incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.[2]

Section 91.1062 Flight Duty Periods and Rest Requirements: Flight Attendants

A fractional aircraft ownership program entity operating under part 91, subpart K will incur limits on the scheduled duty period they may assign a flight attendant who is defined in § 91.1057 as an individual whose duties include but are not necessarily limited to safety-related responsibilities. It includes individuals either required by the program manager's management specifications minimum crew complement or in addition to that minimum. The FAA assumes, for the purposes of this analysis, that fractional program managers will elect the team approach provided for in § 91.1062(b)(2) and therefore the duty limitation will principally affect only ultra-long range flights. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively will incur compliance costs of $500 per flight or a total of approximately $1.1 million.

[2] Operating costs associated with augmenting flight crews, such as salaries, training, drug and alcohol misuse program, and other administrative program costs are captured under the specific requirements addressing these areas.

Sections 91.1063 through 91.1107 Various Training

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs of $209,000 in the first year of operation only. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will incur compliance costs of $2.5 million.

Section 91.1115 Minimum Equipment Lists and Letters of Authorization

A fractional aircraft ownership program entity operating under part 91, subpart K will incur costs of $5,225 in the first year of operation only to comply with this requirement. Negligible compliance costs will be incurred in subsequent years of operation and are estimated as to be zero. Over the 15-year period from 2003 to 2017, fractional aircraft ownership operations collectively will incur compliance costs of $63,000.

Federal Aviation Administration Costs

The current FAA workforce will be sufficient to perform the monitoring and surveillance activities associated with administering the requirements of the rule. However, it will be necessary for the FAA to develop a training course and associated instructional materials to educate its inspectors and supervisors in their responsibilities to administer the rule. Familiarization training by either satellite broadcast or video will be made available to all inspectors while inspectors assigned to fractional program operators will undergo a two-day training program. Accordingly, the FAA estimates that it will incur $730,000 in the first year to train its workforce appropriately, and will incur $20,000 in each subsequent year for initial training of newly assigned inspectors. Additionally, the FAA will incur $683,000 in the first year only to prepare and implement management specifications for the requirements contained in the rule.

The FAA also estimates that it will incur annual costs of $95,000. This cost is based on the time of existing FAA staff spent reviewing and processing program information and clerical support to issue written approvals and authorizations submitted to the FAA as identified in this document. Over the 15-year period from 2003 to 2017, the FAA will incur costs of approximately $3.1 million to administer the requirement of the rule.

Benefits

Most fractional aircraft ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. The FAA believes that the standards of subpart K are necessary to assure the continued safety of operations for a fairly new and rapidly growing segment of aviation by placing regulatory limits on operations that qualify as ''fractional aircraft ownership program'', and by clearly delineating the safety responsibilities of fractional owners and fractional ownership program managers.

Other Impacts of the Proposed Rule

Cost savings may be realized by fractional aircraft ownership program entities and ''eligible on-demand'' air charter operations as a result of the final rule. Eligible on-demand air charter will incur costs if they are to realize the cost savings. The impacts are summarized below.

Sections 61.57 Exceptions, and 135.247 Pilot Qualifications: Recent Experience

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 and eligible on-demand part 135 entities will realize annual cost savings of $3,135 per pilot as a result of complying with the requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations collectively will realize cost savings of approximately $219.6 million. Eligible on-demand part 135 operators will realize cost savings of approximately $452 million.

Sections 91.509 Survival Equipment for Over-water Operations, and 135.167 Emergency Equipment: Extended Over-water Operations

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 has the potential to realize cost savings of approximately $3,660 per trip. The amount saved depends on the ability of the entity to secure a deviation from this requirement. Similar per trip savings would be available to eligible on-demand part 135 operators.

Section 135.4 Eligible On-demand Operations

An ''eligible on-demand'' entity operates turbine powered airplanes that are type certificated for more than one pilot, have higher experienced pilots and have a crew pairing program. The estimated cost of these provisions over the 15-year period from 2003 to 2017 is approximately $82 million.

Section 135.145 Aircraft Proving Tests

A fractional aircraft ownership program entity operating under part 135 will realize cost savings of $36,600 per proving test complying with this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (under part 135) collectively will realize cost savings of approximately $13.7 million. Eligible on-demand part 135 operators will realize cost savings of approximately $92 million over the 15-year period.

Section 135.225 IFR: Takeoff, Approach, and Landing

A fractional aircraft ownership program entity operating under part 135 will realize $36,600 annually in cost savings as a result of this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 135) collectively will realize approximately $1.6 million in cost savings. Collectively, eligible on-demand part 135 operators will realize cost savings of approximately $34 million over the 15-year period.

Sections 135.251 and 135.255 Testing for Prohibited Drugs and Alcohol

A fractional aircraft ownership program entity operating under part 135 will realize $1,700 in cost savings and incur costs of $50 per occurrence as a result of this requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership program operations (operating under part 135) collectively will realize approximately $2.6 million in cost savings and incur costs of approximately $50,000. Eligible on-demand part 135 operators will realize $1,385 in cost savings and incur costs of $50 per occurrence as a result of this requirement. Over the 15-year period these operators collectively will realize approximately $17 million in cost savings and incur costs of approximately $622,500.

Summary of Costs, Cost Savings, and Benefits

The total costs of the proposed rule are approximately $133.2 million ($85.8 million, discounted). Fractional aircraft ownership program entities will incur approximately $47.4 million ($35.2 million, discounted) of these costs to comply with the requirements contained in the rule; while part 135 eligible on-demand entities will incur $82.7 million ($48.3 million, discounted) in compliance costs. The FAA will incur total costs of approximately $3.1 million ($2.3 million, discounted) to administer the rule. Fractional aircraft ownership program entities will realize approximately $237.4 million in cost savings (entities operating under part 91, subpart K will realize $132.4 million ($75.6 million, discounted); entities operating under part 135 will realize $105 million ($62.5 million, discounted)) while eligible on-demand part 135 operators will realize approximately $596 million ($370.3 million, discounted) in cost savings. The public is expected to benefit from enhanced aviation safety directly attributable to the proposed rule. These costs, cost savings, and benefits are summarized in Table S–1.

TABLE S–1. SUMMARY OF COSTS, COST SAVINGS, AND BENEFITS

[In 2001 dollars]

Category	Undiscounted	Discounted [a]
Fractional Aircraft Ownership Program		
Operations Compliance Costs for Entities Operating Under:		
Part 91, Subpart K:	$47,283,800	$35,123,400
Part 135:	75,000	45,500
Total	47,358,800	35,168,900
Eligible On-demand part 135 Operators	82,689,400	48,326,800
FAA Administrative Costs	3,118,000	2,349,300
Total Costs	133,166,200	85,845,000
Potential Costs Savings to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, Subpart K:	132,416,400	75,600,700
Part 135:	104,964,800	62,459,700
Total	237,381,200	138,060,400
Eligible On-demand part 135 Operators	595,909,700	370,307,000
Total Cost Savings	833,290,900	508,367,400
Safety Benefits	Enhanced Safety	Enhanced Safety

[a] Discounted at 7 percent over a 15-year period from 2003 to 2017.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement

providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will potentially impact 12 small businesses and, for the purposes of this analysis, has assumed all these firms will operate under subpart K of part 91 thus imposing on an entity average compliance costs of approximately $3.9 million over the 15-year period (in 2001 dollars). The annualized compliance cost to each small business will be approximately $321,350 (in 2001 dollars) which the current operators have stated will be voluntarily incurred. Furthermore, 6 of these 12 entities will be new entrants. The FAA has determined that the rule will potentially impose on each new (small business) entrant a compliance cost of approximately $617,400 over a 15-year period (in 2001 dollars). The annualized compliance cost to a new entrant will be approximately $57,500 (in 2001 dollars). The FAA does not have information on the revenues of these small entrants but based on information about one of the current operators, the FAA estimates that a program aircraft generates approximately $4.6 million in revenues. If a new entrant has two aircraft, the cost that this rule will impose on it is less than one percent of the approximate revenues generated by those two aircraft. The FAA therefore believes these costs will not have a significant impact on small entrants. Hence, the FAA has determined that the estimated compliance costs expected to be incurred by existing fractional aircraft ownership programs and new entrants over the 15-year period will be marginal.

Eligible on-demand part 135 operators who voluntarily elect to meet the requirement of part 135.4 will incur an annual cost of $1,725 for one-third of its pilots. Thus, an operator of a single aircraft using three pilots will incur a total cost of $1,725 which is less than the total cost of a single hour operating the type of turbine powered aircraft that meet the requirements of part 135.4. The FAA therefore believes this cost will not have a significant impact on small eligible on-demand entrants. Therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic entities and on international entities and thus has a neutral trade impact.

Unfunded Mandates Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention of International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO) to the maximum extent practicable. ICAO does not specifically address fractional ownership. However, in view of the FAA's conclusion that fractional ownership program operations conducted in conformity with subpart K of 14 CFR part 91 are general aviation activities, this final rule does not conflict with ICAO international standards applicable to international general aviation operations.

Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with the FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with 42 U.S.C. 6362, ''Energy Conservation Policies and Practices,'' and Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that the final rule is not a major regulatory action as identified in 42 U.S.C. 6362 or is not a significant energy action, as defined in Executive Order 13211.

List of Subjects

14 CFR Part 121

Air Carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Rotorcraft, Aviation safety, Safety.

14 CFR Part 142

Training center.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration

amends parts 21, 61, 91, 119, 125, 135, and 142 of title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g); 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Amend § 21.197 by adding paragraph (c)(3) to read as follows:

§ 21.197 Special flight permits.

* * * * *

(c) * * *

(3) Management specification holders authorized to conduct operations under part 91, subpart K, for those aircraft they operate and maintain under a continuous airworthiness maintenance program prescribed by § 91.1411 of this part.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 4. Amend § 61.55 by revising paragraphs (d)(1) and (2) to read as follows:

§ 61.55 Second-in-command qualifications.

* * * * *

(d) * * *

(1) Designated and qualified as pilot in command under subpart K of part 91, part 121, 125, or 135 of this chapter in that specific type of aircraft;

(2) Designated as the second in command under subpart K of part 91, part 121, 125, or 135 of this chapter in that specific type of aircraft;

* * * * *

■ 5. Amend § 61.57 by revising paragraphs (d)(2)(iii) and (e)(3) as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(d) *Instrument proficiency check.* * * *

(2) * * *

(iii) A company check pilot who is authorized to conduct instrument flight tests under part 121, 125, or 135 of this chapter or subpart K of part 91 of this chapter, and provided that both the check pilot and the pilot being tested are employees of that operator or fractional ownership program manager, as applicable;

* * * * *

(e) *Exceptions.* * * *

(3) Paragraph (b) of this section does not apply to a pilot in command of a turbine-powered airplane that is type certificated for more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (e)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane that is type certificated for more than one pilot crewmember, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane that is type certificated for more than one pilot crewmember, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

■ 6. Amend § 61.58 by revising paragraphs (b) and (c) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one pilot flight crewmember.

* * * * *

(b) This section does not apply to persons conducting operations under subpart K of part 91, part 121, 125, 133, 135, or 137 of this chapter, or persons maintaining continuing qualification under an Advanced Qualification program approved under SFAR 58.

(c) The pilot-in-command proficiency check given in accordance with the provisions of subpart K of part 91, part 121, 125, or 135 of this chapter may be used to satisfy the requirements of this section.

* * * * *

■ 7. Amend § 61.63 by revising the introductory text of paragraph (d)(7) and paragraph (d)(7)(ii) to read as follows:

§ 61.63 Additional aircraft ratings (other than on an airline transport pilot certificate).

* * * * *

(d) * * *

(7) In the case of a pilot employee of a certificate holder operating under part 121 or 135 of this chapter or of a fractional ownership program manager under subpart K of part 91 of this chapter, must have—

* * * * *

(ii) Received an endorsement in his or her flight training record from the certificate holder or program manager attesting that the applicant has completed the certificate holder's or program manager's approved ground and flight training program appropriate to the aircraft type rating sought.

* * * * *

■ 8. Amend § 61.157 by revising paragraphs (c) and (f)(1) to read as follows:

§ 61.157 Flight proficiency.

* * * * *

(c) *Exceptions.* A person who is applying for an aircraft type rating to be added to an airline transport pilot certificate or an aircraft type rating concurrently with an airline transport pilot certificate, and who is an employee of a certificate holder operating under part 121 or 135 of this chapter or of a fractional ownership program manager operating under subpart K of part 91 of this chapter, need not comply with the requirements of paragraph (b) of this section if the applicant presents a training record that shows satisfactory completion of that certificate holder's or program manager's approved pilot-in-command training program for the aircraft type rating sought.

* * * * *

(f) Proficiency and competency checks conducted under part 121, part 135, or subpart K of part 91. (1) Successful completion of any of the following checks satisfy the requirements of this section for the appropriate aircraft rating:

(i) A proficiency check under § 121.441 of this chapter.

(ii) Both a competency check under § 135.293 of this chapter and a pilot-in-command instrument proficiency check under § 135.297 of this chapter.

(iii) Both a competency check under § 91.1065 of this chapter and a pilot-in-command instrument proficiency check under § 91.1069 of this chapter.

* * * * *

■ 9. Amend § 61.159 by revising paragraph (c)(1)(ii) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

* * * * *

(c) * * *

(1) * * *

(ii) Engaged in operations under subpart K of part 91, part 121, or part 135 of this chapter for which a second in command is required; or

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 10. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 11. Amend § 91.189 by revising paragraph (g) to read as follows:

§ 91.189 Category II and III operations: General operating rules.

* * * * *

(g) Paragraphs (a) through (f) of this section do not apply to operations conducted by certificate holders operating under part 121, 125, 129, or 135 of this chapter, or holders of management specifications issued in accordance with subpart K of this part. Holders of operations specifications or management specifications may operate a civil aircraft in a Category II or Category III operation only in accordance with their operations specifications or management specifications, as applicable.

■ 12. Amend § 91.191 by revising paragraph (c) to read as follows:

§ 91.191 Category II and Category III manual.

* * * * *

(c) This section does not apply to operations conducted by a certificate holder operating under part 121 or part 135 of this chapter or a holder of management specifications issued in accordance with subpart K of this part.

■ 13. Amend § 91.213 by revising paragraph (c) to read as follows:

§ 91.213 Inoperative instruments and equipment.

* * * * *

(c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under subpart K of this part, part 121, 125, or 135 of this chapter must use that Minimum Equipment List to comply with the requirements in this section.

* * * * *

■ 14. Amend § 91.401 by revising paragraph (b) as follows:

§ 91.401 Applicability.

* * * * *

(a) Sections 91.405, 91.409, 91.411, 91.417, and 91.419 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, 129, or §§ 91.1411 or 135.411(a)(2) of this chapter.

* * * * *

■ 15. Amend § 91.415 by revising paragraphs (a) and (c) as follows:

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) or § 91.1109 are necessary for the continued adequacy of the program, the owner or operator must, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

* * * * *

(c) The petition must be filed with the Director, Flight Standards Service within 30 days after the certificate holder or fractional ownership program manager receives the notice.

* * * * *

■ 16. Revise the title of subpart F to read as follows:

Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft

■ 17. Amend § 91.501 by revising paragraph (a), republishing the introductory text of paragraph (b) and adding paragraph (b)(10) to read as follows:

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage. The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes and turbine-powered rotorcraft of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

* * * * *

(10) Any operation identified in paragraphs (b)(1) through (b)(9) of this section when conducted—

(i) By a fractional ownership program manager, or

(ii) By a fractional owner in a fractional ownership program aircraft operated under subpart K of this part, except that a flight under a joint ownership arrangement under paragraph (b)(6) of this section may not be conducted. For a flight under an interchange agreement under paragraph (b)(6) of this section, the exchange of equal time for the operation must be properly accounted for as part of the

total hours associated with the fractional owner's share of ownership.

* * * * *

■ 18. Amend § 91.509 by revising paragraphs (b) introductory text, (c), (d) and (e) and adding paragraph (f) to read as follows:

§ 91.509 Survival equipment for overwater operations.

* * * * *

(b) Except as provided in paragraph (c) of this section, no person may take off an airplane for flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore, whichever is less, unless it has on board the following survival equipment:

* * * * *

(c) A fractional ownership program manager under subpart K of this part may apply for a deviation from paragraphs (b)(2) through (5) of this section for a particular over water operation or the Administrator may amend the management specifications to require the carriage of all or any specific items of the equipment listed in paragraphs (b)(2) through (5) of this section.

(d) The required life rafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(e) A survival kit, appropriately equipped for the route to be flown, must be attached to each required life raft.

(f) As used in this section, the term shore means that area of the land adjacent to the water that is above the high water mark and excludes land areas that are intermittently under water.

■ 19. Amend § 91.519 by adding paragraph (d) as follows:

§ 91.519 Passenger briefing.

* * * * *

(d) For operations under subpart K of this part, the passenger briefing requirements of § 91.1035 apply, instead of the requirements of paragraphs (a) through (c) of this section.

■ 20. Amend § 91.531 by revising the introductory text of paragraph (a) and adding paragraph (d) to read as follows:

§ 91.531 Second in command requirements.

(a) Except as provided in paragraph (b) and (d) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

* * * * *

(d) No person may operate an aircraft under subpart K of this part without a pilot who is designated as second in command of that aircraft in accordance with § 91.1049(d). The second in command must meet the experience requirements of § 91.1053.

■ 21. Add subpart K to part 91 of title 14 Code of Federal Regulations to read as follows:

Subpart K—Fractional Ownership Operations

Sec.

91.1001 Applicability.
91.1002 Compliance date.
91.1003 Management contract between owner and program manager.
91.1005 Prohibitions and limitations.
91.1007 Flights conducted under part 121 or part 135 of this chapter.
91.1009 Clarification of operational control.
91.1011 Operational control responsibilities and delegation.
91.1013 Operational control briefing and acknowledgment.
91.1014 Issuing or denying management specifications.
91.1015 Management specifications.
91.1017 Amending program manager's management specifications.
91.1019 Conducting tests and inspections.
91.1021 Internal safety reporting and incident/accident response.
91.1023 Program operating manual requirements.
91.1025 Program operating manual contents.
91.1027 Recordkeeping.
91.1029 Flight scheduling and locating requirements.
91.1031 Pilot in command or second in command: Designation required.
91.1033 Operating information required.
91.1035 Passenger awareness.
91.1037 Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports.
91.1039 IFR takeoff, approach and landing minimums.
91.1041 Aircraft proving and validation tests.
91.1043 [Reserved].
91.1045 Additional equipment requirements.
91.1047 Drug and alcohol misuse education program.
91.1049 Personnel.
91.1051 Pilot safety background check.
91.1053 Crewmember experience.
91.1055 Pilot operating limitations and pairing requirement.
91.1057 Flight, duty and rest time requirements; All crewmembers.
91.1059 Flight time limitations and rest requirements: One or two pilot crews.
91.1061 Augmented flight crews.
91.1062 Duty periods and rest requirements: Flight attendants.
91.1063 Testing and training: Applicability and terms used.
91.1065 Initial and recurrent pilot testing requirements.
91.1067 Initial and recurrent flight attendant crewmember testing requirements.
91.1069 Flight crew: Instrument proficiency check requirements.
91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.
91.1073 Training program: General.
91.1075 Training program: Special rules.
91.1077 Training program and revision: Initial and final approval.
91.1079 Training program: Curriculum.
91.1081 Crewmember training requirements.
91.1083 Crewmember emergency training.
91.1085 Hazardous materials recognition training.
91.1087 Approval of aircraft simulators and other training devices.
91.1089 Qualifications: Check pilots (aircraft) and check pilots (simulator).
91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).
91.1093 Initial and transition training and checking: Check pilots (aircraft), check pilots (simulator).
91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).
91.1097 Pilot and flight attendant crewmember training programs.
91.1099 Crewmember initial and recurrent training requirements.
91.1101 Pilots: Initial, transition, and upgrade ground training.
91.1103 Pilots: Initial, transition, upgrade, requalification, and differences flight training.
91.1105 Flight attendants: Initial and transition ground training.
91.1107 Recurrent training.
91.1109 Aircraft maintenance: Inspection program.
91.1111 Maintenance training.
91.1113 Maintenance recordkeeping.
91.1115 Inoperable instruments and equipment.
91.1411 Continuous airworthiness maintenance program use by fractional ownership program manager.
91.1413 CAMP: Responsibility for airworthiness.
91.1415 CAMP: Mechanical reliability reports.
91.1417 CAMP: Mechanical interruption summary report.
91.1423 CAMP: Maintenance organization.
91.1425 CAMP: Maintenance, preventive maintenance, and alteration programs.
91.1427 CAMP: Manual requirements.
91.1429 CAMP: Required inspection personnel.
91.1431 CAMP: Continuing analysis and surveillance.
91.1433 CAMP: Maintenance and preventive maintenance training program.
91.1435 CAMP: Certificate requirements.
91.1437 CAMP: Authority to perform and approve maintenance.
91.1439 CAMP: Maintenance recording requirements.
91.1441 CAMP: Transfer of maintenance records.
91.1443 CAMP: Airworthiness release or aircraft maintenance log entry.

Subpart K—Fractional Ownership Operations

§ 91.1001 Applicability.

(a) This subpart prescribes rules, in addition to those prescribed in other subparts of this part, that apply to fractional owners and fractional ownership program managers governing—

(1) The provision of program management services in a fractional ownership program;

(2) The operation of a fractional ownership program aircraft in a fractional ownership program; and

(3) The operation of a program aircraft included in a fractional ownership program managed by an affiliate of the manager of the program to which the owner belongs.

(b) As used in this part—

(1) *Affiliate of a program manager* means a manager that, directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another program manager. The holding of at least forty percent (40 percent) of the equity and forty percent (40 percent) of the voting power of an entity will be presumed to constitute control for purposes of determining an affiliation under this subpart.

(2) A *dry-lease aircraft exchange* means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

(3) A *fractional owner or owner* means an individual or entity that possesses a minimum fractional ownership interest in a program aircraft and that has entered into the applicable program agreements; provided, however, that in the case of the flight operations described in paragraph (b)(6)(ii) of this section, and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft will be deemed to be a fractional owner in the program managed by the affiliate.

(4) A *fractional ownership interest* means the ownership of an interest or holding of a multi-year leasehold interest and/or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

(5) A *fractional ownership program or program* means any system of aircraft ownership and exchange that consists of all of the following elements:

(i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners.

(ii) Two or more airworthy aircraft.

(iii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner.

(iv) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner.

(v) A dry-lease aircraft exchange arrangement among all of the fractional owners.

(vi) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(6) A *fractional ownership program aircraft or program aircraft* means:

(i) An aircraft in which a fractional owner has a minimal fractional ownership interest and that has been included in the dry-lease aircraft exchange pursuant to the program agreements, or

(ii) In the case of a fractional owner from one program operating an aircraft in a different fractional ownership program managed by an affiliate of the operating owner's program manager, the aircraft being operated by the fractional owner, so long as the aircraft is:

(A) Included in the fractional ownership program managed by the affiliate of the operating owner's program manager, and

(B) Included in the operating owner's program's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program.

(iii) An aircraft owned in whole or in part by the program manager that has been included in the dry-lease aircraft exchange and is used to supplement program operations.

(7) A *Fractional Ownership Program Flight or Program Flight* means a flight under this subpart when one or more passengers or property designated by a fractional owner are on board the aircraft.

(8) *Fractional ownership program management services or program management services* mean administrative and aviation support services furnished in accordance with the applicable requirements of this subpart or provided by the program manager on behalf of the fractional owners, including, but not limited to, the—

(i) Establishment and implementation of program safety guidelines;

(ii) Employment, furnishing, or contracting of pilots and other crewmembers;

(iii) Training and qualification of pilots and other crewmembers and personnel;

(iv) Scheduling and coordination of the program aircraft and crews;

(v) Maintenance of program aircraft;

(vi) Satisfaction of recordkeeping requirements;

(vii) Development and use of a program operations manual and procedures; and

(viii) Application for and maintenance of management specifications and other authorizations and approvals.

(9) A *fractional ownership program manager or program manager* means the entity that offers fractional ownership program management services to fractional owners, and is designated in the multi-year program agreements referenced in paragraph (b)(1)(v) of this section to fulfill the requirements of this chapter applicable to the manager of the program containing the aircraft being flown. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in this subpart to the flight-related responsibilities of the program manager apply, with respect to that particular flight, to the affiliate of the owner's program manager rather than to the owner's program manager.

(10) A *minimum fractional ownership interest* means—

(i) A fractional ownership interest equal to, or greater than, one-sixteenth (1/16) of at least one subsonic, fixed-wing or powered-lift program aircraft; or

(ii) A fractional ownership interest equal to, or greater than, one-thirty-second (1/32) of at least one rotorcraft program aircraft.

(c) The rules in this subpart that refer to a fractional owner or a fractional ownership program manager also apply to any person who engages in an operation governed by this subpart without the management specifications required by this subpart.

§ 91.1002 Compliance date.

No person that conducted flights before October 17, 2003 under a program that meets the definition of fractional ownership program in § 91.1001 may conduct such flights after December 17, 2004 unless it has obtained management specifications under this subpart.

§ 91.1003 Management contract between owner and program manager.

Each owner must have a contract with the program manager that—

(a) Requires the program manager to ensure that the program conforms to all applicable requirements of this chapter.

(b) Provides the owner the right to inspect and to audit, or have a designee of the owner inspect and audit, the records of the program manager pertaining to the operational safety of the program and those records required to show compliance with the management specifications and all applicable regulations. These records include, but are not limited to, the management specifications, authorizations, approvals, manuals, log books, and maintenance records maintained by the program manager.

(c) Designates the program manager as the owner's agent to receive service of notices pertaining to the program that the FAA seeks to provide to owners and authorizes the FAA to send such notices to the program manager in its capacity as the agent of the owner for such service.

(d) Acknowledges the FAA's right to contact the owner directly if the Administrator determines that direct contact is necessary.

§ 91.1005 Prohibitions and limitations.

(a) Except as provided in § 91.321 or § 91.501, no owner may carry persons or property for compensation or hire on a program flight.

(b) During the term of the multi-year program agreements under which a fractional owner has obtained a minimum fractional ownership interest in a program aircraft, the flight hours used during that term by the owner on program aircraft must not exceed the total hours associated with the fractional owner's share of ownership.

(c) No person may sell or lease an aircraft interest in a fractional ownership program that is smaller than that prescribed in the definition of ''minimum fractional ownership interest'' in § 91.1001(b)(10) unless flights associated with that interest are operated under part 121 or 135 of this chapter and are conducted by an air carrier or commercial operator certificated under part 119 of this chapter.

§ 91.1007 Flights conducted under part 121 or part 135 of this chapter.

(a) Except as provided in § 91.501(b), when a nonprogram aircraft is used to substitute for a program flight, the flight must be operated in compliance with part 121 or part 135 of this chapter, as applicable.

(b) A program manager who holds a certificate under part 119 of this chapter may conduct a flight for the use of a fractional owner under part 121 or part 135 of this chapter if the aircraft is listed on that certificate holder's operations specifications for part 121 or part 135, as applicable.

(c) The fractional owner must be informed when a flight is being conducted as a program flight or is being conducted under part 121 or part 135 of this chapter.

Operational Control

§ 91.1009 Clarification of operational control.

(a) An owner is in operational control of a program flight when the owner—

(1) Has the rights and is subject to the limitations set forth in §§ 91.1003 through 91.1013;

(2) Has directed that a program aircraft carry passengers or property designated by that owner; and

(3) The aircraft is carrying those passengers or property.

(b) An owner is not in operational control of a flight in the following circumstances:

(1) A program aircraft is used for a flight for administrative purposes such as demonstration, positioning, ferrying, maintenance, or crew training, and no passengers or property designated by such owner are being carried; or

(2) The aircraft being used for the flight is being operated under part 121 or 135 of this chapter.

§ 91.1011 Operational control responsibilities and delegation.

(a) Each owner in operational control of a program flight is ultimately responsible for safe operations and for complying with all applicable requirements of this chapter, including those related to airworthiness and operations in connection with the flight. Each owner may delegate some or all of the performance of the tasks associated with carrying out this responsibility to the program manager, and may rely on the program manager for aviation expertise and program management services. When the owner delegates performance of tasks to the program manager or relies on the program manager's expertise, the owner and the program manager are jointly and individually responsible for compliance.

(b) The management specifications, authorizations, and approvals required by this subpart are issued to, and in the sole name of, the program manager on behalf of the fractional owners collectively. The management specifications, authorizations, and approvals will not be affected by any change in ownership of a program aircraft, as long as the aircraft remains a program aircraft in the identified program.

§ 91.1013 Operational control briefing and acknowledgment.

(a) Upon the signing of an initial program management services contract, or a renewal or extension of a program management services contract, the program manager must brief the fractional owner on the owner's operational control responsibilities, and the owner must review and sign an acknowledgment of these operational control responsibilities. The acknowledgment must be included with the program management services contract. The acknowledgment must define when a fractional owner is in operational control and the owner's responsibilities and liabilities under the program. These include:

(1) Responsibility for compliance with the management specifications and all applicable regulations.

(2) Enforcement actions for any noncompliance.

(3) Liability risk in the event of a flight-related occurrence that causes personal injury or property damage.

(b) The fractional owner's signature on the acknowledgment will serve as the owner's affirmation that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgment.

(c) Each program manager must ensure that the fractional owner or owner's representatives have access to the acknowledgments for such owner's program aircraft. Each program manager must ensure that the FAA has access to the acknowledgments for all program aircraft.

Program Management

§ 91.1014 Issuing or denying management specifications.

(a) A person applying to the Administrator for management specifications under this subpart must submit an application—

(1) In a form and manner prescribed by the Administrator; and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Management specifications will be issued to the program manager on behalf of the fractional owners if, after investigation, the Administrator finds that the applicant:

(1) Meets the applicable requirements of this subpart; and

(2) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct safe operations under appropriate provisions of part 91 of this

chapter and management specifications issued under this subpart.

(c) An application for management specifications will be denied if the Administrator finds that the applicant is not properly or adequately equipped or is not able to conduct safe operations under this part.

§ 91.1015 Management specifications.

(a) Each person conducting operations under this subpart or furnishing fractional ownership program management services to fractional owners must do so in accordance with management specifications issued by the Administrator to the fractional ownership program manager under this subpart. Management specifications must include:

(1) The current list of all fractional owners and types of aircraft, registration markings and serial numbers;

(2) The authorizations, limitations, and certain procedures under which these operations are to be conducted,

(3) Certain other procedures under which each class and size of aircraft is to be operated;

(4) Authorization for an inspection program approved under § 91.1109, including the type of aircraft, the registration markings and serial numbers of each aircraft to be operated under the program. No person may conduct any program flight using any aircraft not listed.

(5) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft.

(6) The specific location of the program manager's principal base of operations and, if different, the address that will serve as the primary point of contact for correspondence between the FAA and the program manager and the name and mailing address of the program manager's agent for service;

(7) Other business names the program manager may use;

(8) Authorization for the method of controlling weight and balance of aircraft;

(9) Any authorized deviation and exemption granted from any requirement of this chapter; and

(10) Any other information the Administrator determines is necessary.

(b) The program manager may keep the current list of all fractional owners required by paragraph (a)(1) of this section at its principal base of operation or other location approved by the Administrator and referenced in its management specifications. Each program manager shall make this list of owners available for inspection by the Administrator.

(c) Management specifications issued under this subpart are effective unless—

(1) The management specifications are amended as provided in § 91.1017; or

(2) The Administrator suspends or revokes the management specifications.

(d) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a program manager must provide written notification to the Flight Standards District Office that issued the program manager's management specifications.

(e) Each program manager must maintain a complete and separate set of its management specifications at its principal base of operations, or at a place approved by the Administrator, and must make its management specifications available for inspection by the Administrator and the fractional owner(s) to whom the program manager furnishes its services for review and audit.

(f) Each program manager must insert pertinent excerpts of its management specifications, or references thereto, in its program manual and must—

(1) Clearly identify each such excerpt as a part of its management specifications; and

(2) State that compliance with each management specifications requirement is mandatory.

(g) Each program manager must keep each of its employees and other persons who perform duties material to its operations informed of the provisions of its management specifications that apply to that employee's or person's duties and responsibilities.

§ 91.1017 Amending program manager's management specifications.

(a) The Administrator may amend any management specifications issued under this subpart if—

(1) The Administrator determines that safety and the public interest require the amendment of any management specifications; or

(2) The program manager applies for the amendment of any management specifications, and the Administrator determines that safety and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment of a program manager's management specifications, the following procedure applies:

(1) The Flight Standards District Office that issued the program manager's management specifications will notify the program manager in writing of the proposed amendment.

(2) The Flight Standards District Office that issued the program manager's management specifications will set a reasonable period (but not less than 7 days) within which the program manager may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications will notify the program manager of—

(i) The adoption of the proposed amendment,

(ii) The partial adoption of the proposed amendment, or

(iii) The withdrawal of the proposed amendment.

(4) If the Flight Standards District Office that issued the program manager's management specifications issues an amendment of the management specifications, it becomes effective not less than 30 days after the program manager receives notice of it unless—

(i) The Flight Standards District Office that issued the program manager's management specifications finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety; or

(ii) The program manager petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the program manager applies for an amendment to its management specifications, the following procedure applies:

(1) The program manager must file an application to amend its management specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases such as mergers, acquisitions of operational assets that require an additional showing of safety (for example, proving tests or validation tests), and resumption of operations following a suspension of operations as a result of bankruptcy actions.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the Flight Standards District Office that issued the program manager's management specifications in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the Flight Standards District Office that issued the program

manager's management specifications will notify the program manager of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The program manager may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the Flight Standards District Office that issued the program manager's management specifications approves the amendment, following coordination with the program manager regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a program manager seeks reconsideration of a decision of the Flight Standards District Office that issued the program manager's management specifications concerning the amendment of management specifications, the following procedure applies:

(1) The program manager must petition for reconsideration of that decision within 30 days of the date that the program manager receives a notice of denial of the amendment of its management specifications, or of the date it receives notice of an FAA-initiated amendment of its management specifications, whichever circumstance applies.

(2) The program manager must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the Flight Standards District Office that issued the program manager's management specifications unless that District Office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the Flight Standards District Office that issued the program manager's management specifications finds that an emergency exists requiring immediate action with respect to safety that makes the procedures set out in this section impracticable or contrary to the public interest—

(1) The Flight Standards District Office amends the management specifications and makes the amendment effective on the day the program manager receives notice of it; and

(2) In the notice to the program manager, the Flight Standards District Office will articulate the reasons for its finding that an emergency exists requiring immediate action with respect to safety or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 91.1019 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test, other than an en route inspection, to determine whether a program manager under this subpart is complying with title 49 of the United States Code, applicable regulations, and the program manager's management specifications.

(b) The program manager must—

(1) Make available to the Administrator at the program manager's principal base of operations, or at a place approved by the Administrator, the program manager's management specifications; and

(2) Allow the Administrator to make any test or inspection, other than an en route inspection, to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the program manager who is responsible for maintaining the program manager's records required by or necessary to demonstrate compliance with this subpart must make those records available to the Administrator.

(d) The Administrator may determine a program manager's continued eligibility to hold its management specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any program manager to make available to the Administrator upon request, the management specifications, or any required record, document, or report is grounds for suspension of all or any part of the program manager's management specifications.

§ 91.1021 Internal safety reporting and incident/accident response.

(a) Each program manager must establish an internal anonymous safety reporting procedure that fosters an environment of safety without any potential for retribution for filing the report.

(b) Each program manager must establish procedures to respond to an aviation incident/accident.

§ 91.1023 Program operating manual requirements.

(a) Each program manager must prepare and keep current a program operating manual setting forth procedures and policies acceptable to the Administrator. The program manager's management, flight, ground, and maintenance personnel must use this manual to conduct operations under this subpart. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, part of the manual is not necessary for guidance of management, flight, ground, or maintenance personnel.

(b) Each program manager must maintain at least one copy of the manual at its principal base of operations.

(c) No manual may be contrary to any applicable U.S. regulations, foreign regulations applicable to the program flights in foreign countries, or the program manager's management specifications.

(d) The program manager must make a copy of the manual, or appropriate portions of the manual (and changes and additions), available to its maintenance and ground operations personnel and must furnish the manual to—

(1) Its crewmembers; and

(2) Representatives of the Administrator assigned to the program manager.

(e) Each employee of the program manager to whom a manual or appropriate portions of it are furnished under paragraph (d)(1) of this section must keep it up-to-date with the changes and additions furnished to them.

(f) Except as provided in paragraph (h) of this section, the appropriate parts of the manual must be carried on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a program manager may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the program manager furnishes all or part of the manual in other than printed form, it must ensure there is a compatible reading device available to those persons that provides a legible image of the maintenance information and instructions, or a system that is able to retrieve the maintenance information and instructions in the English language.

(h) If a program manager conducts aircraft inspections or maintenance at specified facilities where the approved aircraft inspection program is available, the program manager is not required to ensure that the approved aircraft

inspection program is carried aboard the aircraft en route to those facilities.

(i) Program managers that are also certificated to operate under part 121 or 135 of this chapter may be authorized to use the operating manual required by those parts to meet the manual requirements of subpart K, provided:

(1) The policies and procedures are consistent for both operations, or

(2) When policies and procedures are different, the applicable policies and procedures are identified and used.

§ 91.1025 Program operating manual contents.

Each program operating manual must have the date of the last revision on each revised page. Unless otherwise authorized by the Administrator, the manual must include the following:

(a) Procedures for ensuring compliance with aircraft weight and balance limitations;

(b) Copies of the program manager's management specifications or appropriate extracted information, including area of operations authorized, category and class of aircraft authorized, crew complements, and types of operations authorized;

(c) Procedures for complying with accident notification requirements;

(d) Procedures for ensuring that the pilot in command knows that required airworthiness inspections have been made and that the aircraft has been approved for return to service in compliance with applicable maintenance requirements;

(e) Procedures for reporting and recording mechanical irregularities that come to the attention of the pilot in command before, during, and after completion of a flight;

(f) Procedures to be followed by the pilot in command for determining that mechanical irregularities or defects reported for previous flights have been corrected or that correction of certain mechanical irregularities or defects have been deferred;

(g) Procedures to be followed by the pilot in command to obtain maintenance, preventive maintenance, and servicing of the aircraft at a place where previous arrangements have not been made by the program manager or owner, when the pilot is authorized to so act for the operator;

(h) Procedures under § 91.213 for the release of, and continuation of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(i) Procedures for refueling aircraft, eliminating fuel contamination, protecting from fire (including electrostatic protection), and supervising and protecting passengers during refueling;

(j) Procedures to be followed by the pilot in command in the briefing under § 91.1035.

(k) Procedures for ensuring compliance with emergency procedures, including a list of the functions assigned each category of required crewmembers in connection with an emergency and emergency evacuation duties;

(l) The approved aircraft inspection program, when applicable;

(m) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit if an emergency occurs;

(n) Procedures for performance planning that take into account take off, landing and en route conditions;

(o) An approved Destination Airport Analysis, when required by § 91.1037(c), that includes the following elements, supported by aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required;

(7) Airplane inoperative equipment;

(8) Environmental conditions; and

(9) Other criteria that affect aircraft performance.

(p) A suitable system (which may include a coded or electronic system) that provides for preservation and retrieval of maintenance recordkeeping information required by § 91.1113 in a manner acceptable to the Administrator that provides—

(1) A description (or reference to date acceptable to the Administrator) of the work performed:

(2) The name of the person performing the work if the work is performed by a person outside the organization of the program manager; and

(3) The name or other positive identification of the individual approving the work.

(q) Flight locating and scheduling procedures; and

(r) Other procedures and policy instructions regarding program operations that are issued by the program manager or required by the Administrator.

§ 91.1027 Recordkeeping.

(a) Each program manager must keep at its principal base of operations or at other places approved by the Administrator, and must make available for inspection by the Administrator all of the following:

(1) The program manager's management specifications.

(2) A current list of the aircraft used or available for use in operations under this subpart, the operations for which each is equipped (for example, MNPS, RNP5/10, RVSM.).

(3) An individual record of each pilot used in operations under this subpart, including the following information:

(i) The full name of the pilot.

(ii) The pilot certificate (by type and number) and ratings that the pilot holds.

(iii) The pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this subpart.

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

(v) The effective date and class of the medical certificate that the pilot holds.

(vi) The date and result of each of the initial and recurrent competency tests and proficiency checks required by this subpart and the type of aircraft flown during that test or check.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this subpart.

(viii) The pilot's check pilot authorization, if any.

(ix) Any action taken concerning the pilot's release from employment for physical or professional disqualification; and

(x) The date of the satisfactory completion of initial, transition, upgrade, and differences training and each recurrent training phase required by this subpart.

(4) An individual record for each flight attendant used in operations under this subpart, including the following information:

(i) The full name of the flight attendant, and

(ii) The date and result of training required by § 91.1063, as applicable.

(5) A current list of all fractional owners and associated aircraft. This list or a reference to its location must be included in the management specifications and should be of sufficient detail to determine the minimum fractional ownership interest of each aircraft.

(b) Each program manager must keep each record required by paragraph (a)(2) of this section for at least 6 months, and

must keep each record required by paragraphs (a)(3) and (a)(4) of this section for at least 12 months. When an employee is no longer employed or affiliated with the program manager or fractional owner, each record required by paragraphs (a)(3) and (a)(4) of this section must be retained for at least 12 months.

(c) Each program manager is responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest must be prepared before each takeoff and must include—

(1) The number of passengers;

(2) The total weight of the loaded aircraft;

(3) The maximum allowable takeoff weight for that flight;

(4) The center of gravity limits;

(5) The center of gravity of the loaded aircraft, except that the actual center of gravity need not be computed if the aircraft is loaded according to a loading schedule or other approved method that ensures that the center of gravity of the loaded aircraft is within approved limits. In those cases, an entry must be made on the manifest indicating that the center of gravity is within limits according to a loading schedule or other approved method;

(6) The registration number of the aircraft or flight number;

(7) The origin and destination; and

(8) Identification of crewmembers and their crew position assignments.

(d) The pilot in command of the aircraft for which a load manifest must be prepared must carry a copy of the completed load manifest in the aircraft to its destination. The program manager must keep copies of completed load manifest for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(e) Each program manager is responsible for providing a written document that states the name of the entity having operational control on that flight and the part of this chapter under which the flight is operated. The pilot in command of the aircraft must carry a copy of the document in the aircraft to its destination. The program manager must keep a copy of the document for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(f) Records may be kept either in paper or other form acceptable to the Administrator.

(g) Program managers that are also certificated to operate under part 121 or 135 of this chapter may satisfy the recordkeeping requirements of this section and of § 91.1113 with records maintained to fulfill equivalent obligations under part 121 or 135 of this chapter.

§ 91.1029 Flight scheduling and locating requirements.

(a) Each program manager must establish and use an adequate system to schedule and release program aircraft.

(b) Except as provided in paragraph (d) of this section, each program manager must have adequate procedures established for locating each flight, for which a flight plan is not filed, that—

(1) Provide the program manager with at least the information required to be included in a VFR flight plan;

(2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and

(3) Provide the program manager with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(c) Flight locating information must be retained at the program manager's principal base of operations, or at other places designated by the program manager in the flight locating procedures, until the completion of the flight.

(d) The flight locating requirements of paragraph (b) of this section do not apply to a flight for which an FAA flight plan has been filed and the flight plan is canceled within 25 nautical miles of the destination airport.

§ 91.1031 Pilot in command or second in command: Designation required.

(a) Each program manager must designate a—

(1) Pilot in command for each program flight; and

(2) Second in command for each program flight requiring two pilots.

(b) The pilot in command, as designated by the program manager, must remain the pilot in command at all times during that flight.

§ 91.1033 Operating information required.

(a) Each program manager must, for all program operations, provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot must use them—

(1) A cockpit checklist;

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate;

(3) At least one set of pertinent aeronautical charts; and

(4) For IFR operations, at least one set of pertinent navigational en route, terminal area, and instrument approach procedure charts.

(b) Each cockpit checklist required by paragraph (a)(1) of this section must contain the following procedures:

(1) Before starting engines;

(2) Before takeoff;

(3) Cruise;

(4) Before landing;

(5) After landing; and

(6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other emergency procedures necessary for safety.

§ 91.1035 Passenger awareness.

(a) Prior to each takeoff, the pilot in command of an aircraft carrying passengers on a program flight must ensure that all passengers have been orally briefed on—

(1) *Smoking:* Each passenger must be briefed on when, where, and under what conditions smoking is prohibited. This briefing must include a statement, as appropriate, that the regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) *Use of safety belts, shoulder harnesses, and child restraint systems:* Each passenger must be briefed on when, where and under what conditions it is necessary to have his or her safety belt and, if installed, his or her shoulder harness fastened about him or her, and if a child is being transported, the appropriate use of child restraint systems, if available. This briefing must include a statement, as appropriate, that the regulations require passenger compliance with the lighted passenger information sign and/or crewmember instructions with regard to these items;

(3) The placement of seat backs in an upright position before takeoff and landing;

(4) Location and means for opening the passenger entry door and emergency exits;

(5) Location of survival equipment;

(6) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water;

(7) The normal and emergency use of oxygen installed in the aircraft; and

(8) Location and operation of fire extinguishers.

(b) Prior to each takeoff, the pilot in command of an aircraft carrying passengers on a program flight must ensure that each person who may need the assistance of another person to move expeditiously to an exit if an emergency occurs and that person's attendant, if any, has received a briefing as to the procedures to be followed if an evacuation occurs. This paragraph does not apply to a person who has been given a briefing before a previous leg of that flight in the same aircraft.

(c) Prior to each takeoff, the pilot in command must advise the passengers of the name of the entity in operational control of the flight.

(d) The oral briefings required by paragraphs (a), (b), and (c) of this section must be given by the pilot in command or another crewmember.

(e) The oral briefing required by paragraph (a) of this section may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

(f) The oral briefing required by paragraph (a) of this section must be supplemented by printed cards that must be carried in the aircraft in locations convenient for the use of each passenger. The cards must—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

§ 91.1037 Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports.

(a) No program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off that airplane at a weight that (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature expected at the time of landing.

(b) Except as provided in paragraph (c) of this section, no program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions expected there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of that airplane, and considering other conditions such as landing aids and terrain.

(c) A program manager or other person flying a turbine engine powered large transport category airplane on a program flight may permit that airplane to take off at a weight in excess of that allowed by paragraph (b) of this section if all of the following conditions exist:

(1) The operation is conducted in accordance with an approved Destination Airport Analysis in that person's program operating manual that contains the elements listed in § 91.1025(o).

(2) The airplane's weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions expected there at the time of landing), would allow a full stop landing at the intended destination airport within 80 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(i) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(ii) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of that airplane, and considering other conditions such as landing aids and terrain.

(3) The operation is authorized by management specifications.

(d) No program manager or other person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in paragraph (b) of this section) that airplane, at the weight expected at the time of arrival, can be brought to a full stop landing within 80 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(e) Unless, based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) or (c) of this section) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination or alternate airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) or (c) of this section.

§ 91.1039 IFR takeoff, approach and landing minimums.

(a) No pilot on a program aircraft operating a program flight may begin an instrument approach procedure to an airport unless—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting is available at the destination airport, the pilot must obtain the current local altimeter setting from a source provided by the facility designated on the approach chart for the destination airport.

(b) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (a)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

(c) The MDA or Decision Altitude and visibility landing minimums prescribed in part 97 of this chapter or in the program manager's management specifications are increased by 100 feet and 1/2 mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in

command of a turbine-powered aircraft who has not served at least 100 hours as pilot in command in that type of aircraft.

(d) No person may take off an aircraft under IFR from an airport where weather conditions are at or above takeoff minimums but are below authorized IFR landing minimums unless there is an alternate airport within one hour's flying time (at normal cruising speed, in still air) of the airport of departure.

(e) Each pilot making an IFR takeoff or approach and landing at an airport must comply with applicable instrument approach procedures and take off and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may, at that airport take off when the visibility is less than 600 feet.

§ 91.1041 Aircraft proving and validation tests.

(a) No program manager may permit the operation of an aircraft, other than a turbojet aircraft, for which two pilots are required by the type certification requirements of this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of en route airports as determined by the Administrator.

(b) No program manager may permit the operation of a turbojet airplane if it has not previously proved a turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of en route airports as determined by the Administrator.

(c) No program manager may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(d) Validation testing is required to determine that a program manager is capable of conducting operations safely and in compliance with applicable regulatory standards. Validation tests are required for the following authorizations:

(1) The addition of an aircraft for which two pilots are required for operations under VFR or a turbojet airplane, if that aircraft or an aircraft of the same make or similar design has not been previously proved or validated in operations under this part.

(2) Operations outside U.S. airspace.

(3) Class II navigation authorizations.

(4) Special performance or operational authorizations.

(e) Validation tests must be accomplished by test methods acceptable to the Administrator. Actual flights may not be required when an applicant can demonstrate competence and compliance with appropriate regulations without conducting a flight.

(f) Proving tests and validation tests may be conducted simultaneously when appropriate.

(g) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

§ 91.1043 [Reserved]

§ 91.1045 Additional equipment requirements.

No person may operate a program aircraft on a program flight unless the aircraft is equipped with the following—

(a) Airplanes having a passenger-seat configuration of more than 30 seats or a payload capacity of more than 7,500 pounds:

(1) A cockpit voice recorder as required by § 121.359 of this chapter as applicable to the aircraft specified in that section.

(2) A flight recorder as required by § 121.343 or § 121.344 of this chapter as applicable to the aircraft specified in that section.

(3) A terrain awareness and warning system as required by § 121.354 of this chapter as applicable to the aircraft specified in that section.

(4) A traffic alert and collision avoidance system as required by § 121.356 of this chapter as applicable to the aircraft specified in that section.

(5) Airborne weather radar as required by § 121.357 of this chapter, as applicable to the aircraft specified in that section.

(b) Airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember, and a payload capacity of 7,500 pounds or less, and any rotorcraft (as applicable):

(1) A cockpit voice recorder as required by § 135.151 of this chapter as applicable to the aircraft specified in that section.

(2) A flight recorder as required by § 135.152 of this chapter as applicable to the aircraft specified in that section.

(3) A terrain awareness and warning system as required by § 135.154 of this chapter as applicable to the aircraft specified in that section.

(4) A traffic alert and collision avoidance system as required by § 135.180 of this chapter as applicable to the aircraft specified in that section.

(5) As applicable to the aircraft specified in that section, either:

(i) Airborne thunderstorm detection equipment as required by § 135.173 of this chapter; or

(ii) Airborne weather radar as required by § 135.175 of this chapter.

§ 91.1047 Drug and alcohol misuse education program.

(a) Each program manager must provide each direct employee performing flight crewmember, flight attendant, flight instructor, or aircraft maintenance duties with drug and alcohol misuse education.

(b) No program manager may use any contract employee to perform flight crewmember, flight attendant, flight instructor, or aircraft maintenance duties for the program manager unless that contract employee has been provided with drug and alcohol misuse education.

(c) Program managers must disclose to their owners and prospective owners the existence of a company drug and alcohol misuse testing program. If the program manager has implemented a company testing program, the program manager's disclosure must include the following:

(1) Information on the substances that they test for, for example, alcohol and a list of the drugs;

(2) The categories of employees tested, the types of tests, for example, pre-employment, random, reasonable cause/suspicion, post accident, return to duty and follow-up; and

(3) The degree to which the program manager's company testing program is comparable to the federally mandated drug and alcohol misuse prevention program required under part 121, appendices I and J, of this chapter, regarding the information in paragraphs (c)(1) and (c)(2) of this section.

(d) If a program aircraft is operated on a program flight into an airport at which no maintenance personnel are available that are subject to the requirements of paragraphs (a) or (b) of this section and emergency maintenance is required, the

program manager may use persons not meeting the requirements of paragraphs (a) or (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The program manager must notify the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, SW., Washington, DC 20591 in writing within 10 days after being provided emergency maintenance in accordance with this paragraph. The program manager must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (a) or (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(e) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled, and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

(f) Notwithstanding paragraphs (a) and (b) of this section, drug and alcohol misuse education conducted under an FAA-approved drug and alcohol misuse prevention program may be used to satisfy these requirements.

§ 91.1049 Personnel.

(a) Each program manager and each fractional owner must use in program operations on program aircraft flight crews meeting § 91.1053 criteria and qualified under the appropriate regulations. The program manager must provide oversight of those crews.

(b) Each program manager must employ (either directly or by contract) an adequate number of pilots per program aircraft. Flight crew staffing must be determined based on the following factors, at a minimum:

(1) Number of program aircraft.

(2) Program manager flight, duty, and rest time considerations, and in all cases within the limits set forth in §§ 91.1057 through 91.1061.

(3) Vacations.

(4) Operational efficiencies.

(5) Training.

(6) Single pilot operations, if authorized by deviation under paragraph (d) of this section.

(c) Each program manager must publish pilot and flight attendant duty schedules sufficiently in advance to follow the flight, duty, and rest time limits in §§ 91.1057 through 91.1061 in program operations.

(d) Unless otherwise authorized by the Administrator, when any program aircraft is flown in program operations with passengers onboard, the crew must consist of at least two qualified pilots employed or contracted by the program manager or the fractional owner.

(e) The program manager must ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations.

§ 91.1051 Pilot safety background check.

Within 90 days of an individual beginning service as a pilot, the program manager must request the following information:

(a) FAA records pertaining to—

(1) Current pilot certificates and associated type ratings.

(2) Current medical certificates.

(3) Summaries of legal enforcement actions resulting in a finding by the Administrator of a violation.

(b) Records from all previous employers during the five years preceding the date of the employment application where the applicant worked as a pilot. If any of these firms are in bankruptcy, the records must be requested from the trustees in bankruptcy for those employees. If the previous employer is no longer in business, a documented good faith effort must be made to obtain the records. Records from previous employers must include, as applicable—

(1) Crew member records.

(2) Drug testing—collection, testing, and rehabilitation records pertaining to the individual.

(3) Alcohol misuse prevention program records pertaining to the individual.

(4) The applicant's individual record that includes certifications, ratings, aeronautical experience, effective date and class of the medical certificate.

§ 91.1053 Crewmember experience.

(a) No program manager or owner may use any person, nor may any person serve, as a pilot in command or second in command of a program aircraft, or as a flight attendant on a program aircraft, in program operations under this subpart unless that person has met the applicable requirements of part 61 of this chapter and has the following experience and ratings:

(1) Total flight time for all pilots:

(i) Pilot in command—A minimum of 1,500 hours.

(ii) Second in command—A minimum of 500 hours.

(2) For multi-engine turbine-powered fixed-wing and powered-lift aircraft, the following FAA certification and ratings requirements:

(i) Pilot in command—Airline transport pilot and applicable type ratings.

(ii) Second in command—Commercial pilot and instrument ratings.

(iii) Flight attendant (if required or used)—Appropriately trained personnel.

(3) For all other aircraft, the following FAA certification and rating requirements:

(i) Pilot in command—Commercial pilot and instrument ratings.

(ii) Second in command—Commercial pilot and instrument ratings.

(iii) Flight attendant (if required or used)—Appropriately trained personnel.

(b) The Administrator may authorize deviations from paragraph (a)(1) of this section if the Flight Standards District Office that issued the program manager's management specifications finds that the crewmember has comparable experience, and can effectively perform the functions associated with the position in accordance with the requirements of this chapter. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation, the qualifications of the intended personnel and the circumstances set forth in § 91.1055(b)(1) through (3). The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

§ 91.1055 Pilot operating limitations and pairing requirement.

(a) If the second in command of a fixed-wing program aircraft has fewer than 100 hours of flight time as second in command flying in the aircraft make and model and, if a type rating is required, in the type aircraft being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command shall make all takeoffs and landings in any of the following situations:

(1) Landings at the destination airport when a Destination Airport Analysis is required by § 91.1037(c); and

(2) In any of the following conditions:

(i) The prevailing visibility for the airport is at or below 3/4 mile.

(ii) The runway visual range for the runway to be used is at or below 4,000 feet.

(iii) The runway to be used has water, snow, slush, ice or similar contamination that may adversely affect aircraft performance.

(iv) The braking action on the runway to be used is reported to be less than ''good.''

(v) The crosswind component for the runway to be used is in excess of 15 knots.

(vi) Windshear is reported in the vicinity of the airport.

(vii) Any other condition in which the pilot in command determines it to be

prudent to exercise the pilot in command's authority.

(b) No program manager may release a program flight under this subpart unless, for that aircraft make or model and, if a type rating is required, for that type aircraft, either the pilot in command or the second in command has at least 75 hours of flight time, either as pilot in command or second in command. The Administrator may, upon application by the program manager, authorize deviations from the requirements of this paragraph by an appropriate amendment to the management specifications in any of the following circumstances:

(1) A newly authorized program manager does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing program manager adds to its fleet a new category and class aircraft not used before in its operation.

(3) An existing program manager establishes a new base to which it assigns pilots who will be required to become qualified on the aircraft operated from that base.

(c) No person may be assigned in the capacity of pilot in command in a program operation to more than two aircraft types that require a separate type rating.

§ 91.1057 Flight, duty and rest time requirements: All crewmembers.

(a) For purposes of this subpart—

Augmented flight crew means at least three pilots.

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the program manager. All time between these two points is part of the duty period, even if flight time is interrupted by nonflight-related duties. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Extension of flight time means an increase in the flight time because of circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by the program manager, in accordance with the required minimum crew complement under the program manager's management specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

Multi-time zone flight means an easterly or westerly flight or multiple flights in one direction in the same duty period that results in a time zone difference of 5 or more hours and is conducted in a geographic area that is south of 60 degrees north latitude and north of 60 degrees south latitude.

Reserve status means that status in which a flight crewmember, by arrangement with the program manager: Holds himself or herself fit to fly to the extent that this is within the control of the flight crewmember; remains within a reasonable response time of the aircraft as agreed between the flight crewmember and the program manager; and maintains a ready means whereby the flight crewmember may be contacted by the program manager. Reserve status is not part of any duty period or rest period.

Rest period means a period of time required pursuant to this subpart that is free of all responsibility for work or duty prior to the commencement of, or following completion of, a duty period, and during which the flight crewmember or flight attendant cannot be required to receive contact from the program manager. A rest period does not include any time during which the program manager imposes on a flight crewmember or flight attendant any duty or restraint, including any actual work or present responsibility for work should the occasion arise.

Standby means that portion of a duty period during which a flight crewmember is subject to the control of the program manager and holds himself or herself in a condition of readiness to undertake a flight. Standby is not part of any rest period.

(b) A program manager may assign a crewmember and a crewmember may accept an assignment for flight time only when the applicable requirements of this section and §§ 91.1059–91.1062 are met.

(c) No program manager may assign any crewmember to any duty during any required rest period.

(d) Time spent in transportation, not local in character, that a program manager requires of a crewmember and provides to transport the crewmember to an airport at which he or she is to serve on a flight as a crewmember, or from an airport at which he or she was relieved from duty to return to his or her home station, is not considered part of a rest period.

(e) A flight crewmember may continue a flight assignment if the flight to which he or she is assigned would normally terminate within the flight time limitations, but because of circumstances beyond the control of the program manager or flight crewmember (such as adverse weather conditions), is not at the time of departure expected to reach its destination within the planned flight time. The extension of flight time under this paragraph may not exceed the maximum time limits set forth in § 91.1059.

(f) Each flight assignment must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the completion time of the assignment.

(g) The program manager must provide each crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(h) A flight crewmember may decline a flight assignment if, in the flight crewmember's determination, to do so would not be consistent with the standard of safe operation required under this subpart, this part, and applicable provisions of this title.

(i) Any rest period required by this subpart may occur concurrently with any other rest period.

(j) If authorized by the Administrator, a program manager may use the applicable unscheduled flight time limitations, duty period limitations, and rest requirements of part 121 or part 135 of this chapter instead of the flight time limitations, duty period limitations, and rest requirements of this subpart.

§ 91.1059 Flight time limitations and rest requirements: One or two pilot crews.

(a) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a one- or two-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter;

(2) 800 hours in any two consecutive calendar quarters;

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight, when added to any commercial flying by that flight crewmember, may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or

(2) 10 hours for a flight crew consisting of two pilots qualified under this subpart for the operation being conducted.

(c) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty period will exceed, or rest time will be less than—

	Normal duty	Extension of flight time
(1) Minimum Rest Immediately Before Duty	10 Hours	10 Hours.
(2) Duty Period	Up to 14 Hours	Up to 14 Hours.
(3) Flight Time For 1 Pilot	Up to 8 Hours	Exceeding 8 Hours up to 9 Hours.
(4) Flight Time For 2 Pilots	Up to 10 Hours	Exceeding 10 Hours up to 12 Hours.
(5) Minimum After Duty Rest	10 Hours	12 Hours.
(6) Minimum After Duty Rest Period for Multi-Time Zone Flights	14 Hours	18 Hours.

§ 91.1061 Augmented flight crews.

(a) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of an augmented crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter;

(2) 800 hours in any two consecutive calendar quarters;

(3) 1,400 hours in any calendar year.

(b) No program manager may assign any pilot to an augmented crew, unless the program manager ensures:

(1) Adequate sleeping facilities are installed on the aircraft for the pilots.

(2) No more than 8 hours of flight deck duty is accrued in any 24 consecutive hours.

(3) For a three-pilot crew, the crew must consist of at least the following:

(i) A pilot in command (PIC) who meets the applicable flight crewmember requirements of this subpart and § 61.57 of this chapter.

(ii) A PIC qualified pilot who meets the applicable flight crewmember requirements of this subpart and § 61.57(c) and (d) of this chapter.

(iii) A second in command (SIC) who meets the SIC qualifications of this subpart. For flight under IFR, that person must also meet the recent instrument experience requirements of part 61 of this chapter.

(4) For a four-pilot crew, at least three pilots who meet the conditions of paragraph (b)(3) of this section, plus a fourth pilot who meets the SIC qualifications of this subpart. For flight under IFR, that person must also meet the recent instrument experience requirements of part 61 of this chapter.

(c) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty period will exceed, or rest time will be less than—

	3-Pilot crew	4-Pilot crew
(1) Minimum Rest Immediately Before Duty	10 Hours	10 Hours
(2) Duty Period	Up to 16 Hours	Up to 18 Hours
(3) Flight Time	Up to 12 Hours	Up to 16 Hours
(4) Minimum After Duty Rest	12 Hours	18 Hours
(5) Minimum After Duty Rest Period for Multi-Time Zone Flights	18 hours	24 hours

§ 91.1062 Duty periods and rest requirements: Flight attendants.

(a) Except as provided in paragraph (b) of this section, a program manager may assign a duty period to a flight attendant only when the assignment meets the applicable duty period limitations and rest requirements of this paragraph.

(1) Except as provided in paragraphs (a)(4), (a)(5), and (a)(6) of this section, no program manager may assign a flight attendant to a scheduled duty period of more than 14 hours.

(2) Except as provided in paragraph (a)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (a)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (a)(2) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(4) A program manager may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the program manager has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the program manager's management specifications.

(5) A program manager may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the program manager has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the program manager's management specifications.

(6) A program manager may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, and if the program manager has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the program manager's management specifications.

(7) Except as provided in paragraph (a)(8) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (a)(4), (a)(5), and (a)(6) of this section, must be given a

scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(8) The rest period required under paragraph (a)(7) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(9) Notwithstanding paragraphs (a)(4), (a)(5), and (a)(6) of this section, if a program manager elects to reduce the rest period to 10 hours as authorized by paragraph (a)(8) of this section, the program manager may not schedule a flight attendant for a duty period of more than 14 hours during the 24-hour period commencing after the beginning of the reduced rest period.

(b) Notwithstanding paragraph (a) of this section, a program manager may apply the flight crewmember flight time and duty limitations and rest requirements of this part to flight attendants for all operations conducted under this part provided that the program manager establishes written procedures that—

(1) Apply to all flight attendants used in the program manager's operation;

(2) Include the flight crewmember rest and duty requirements of §§ 91.1057, 91.1059, and 91.1061, as appropriate to the operation being conducted, except that rest facilities on board the aircraft are not required;

(3) Include provisions to add one flight attendant to the minimum flight attendant complement for each flight crewmember who is in excess of the minimum number required in the aircraft type certificate data sheet and who is assigned to the aircraft under the provisions of § 91.1061; and

(4) Are approved by the Administrator and described or referenced in the program manager's management specifications.

§ 91.1063 Testing and training: Applicability and terms used.

(a) Sections 91.1065 through 91.1107:

(1) Prescribe the tests and checks required for pilots and flight attendant crewmembers and for the approval of check pilots in operations under this subpart;

(2) Prescribe the requirements for establishing and maintaining an approved training program for crewmembers, check pilots and instructors, and other operations personnel employed or used by the program manager in program operations;

(3) Prescribe the requirements for the qualification, approval and use of aircraft simulators and flight training devices in the conduct of an approved training program; and

(4) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 91.1075 to conduct training, testing and checking under contract or other arrangements to those persons subject to the requirements of this subpart.

(b) If authorized by the Administrator, a program manager may comply with the applicable training and testing sections of subparts N and O of part 121 of this chapter instead of §§ 91.1065 through 91.1107, except for the operating experience requirements of § 121.434 of this chapter.

(c) If authorized by the Administrator, a program manager may comply with the applicable training and testing sections of subparts G and H of part 135 of this chapter instead of §§ 91.1065 through 91.1107, except for the operating experience requirements of § 135.244 of this chapter.

(d) For the purposes of this subpart, the following terms and definitions apply:

(1) *Initial training.* The training required for crewmembers who have not qualified and served in the same capacity on an aircraft.

(2) *Transition training.* The training required for crewmembers who have qualified and served in the same capacity on another aircraft.

(3) *Upgrade training.* The training required for crewmembers who have qualified and served as second in command on a particular aircraft type, before they serve as pilot in command on that aircraft.

(4) *Differences training.* The training required for crewmembers who have qualified and served on a particular type aircraft, when the Administrator finds differences training is necessary before a crewmember serves in the same capacity on a particular variation of that aircraft.

(5) *Recurrent training.* The training required for crewmembers to remain adequately trained and currently proficient for each aircraft crewmember position, and type of operation in which the crewmember serves.

(6) *In flight.* The maneuvers, procedures, or functions that will be conducted in the aircraft.

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to program managers subject to the requirements of this subpart.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified because of not having met within the required period any of the following:

(i) Recurrent crewmember training requirements of § 91.1107.

(ii) Instrument proficiency check requirements of § 91.1069.

(iii) Testing requirements of § 91.1065.

(iv) Recurrent flight attendant testing requirements of § 91.1067.

§ 91.1065 Initial and recurrent pilot testing requirements.

(a) No program manager or owner may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th month before that service, that pilot has passed either a written or oral test (or a combination), given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of parts 61 and 91 of this chapter and the management specifications and the operating manual of the program manager;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the accepted operating manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and en route operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the program manager, high altitude weather;

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent

encounters, including low-altitude windshear (except that rotorcraft aircraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No program manager or owner may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine aircraft other than turbojet, or that type of aircraft, if rotorcraft, multiengine aircraft, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check will be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a rotorcraft, means a basic make and model.

(c) The instrument proficiency check required by § 91.1069 may be substituted for the competency check required by this section for the type of aircraft used in the check.

(d) For the purpose of this subpart, competent performance of a procedure or maneuver by a person to be used as a pilot requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt.

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the program manager's pilot records.

(f) All or portions of a required competency check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1067 Initial and recurrent flight attendant crewmember testing requirements.

No program manager or owner may use a flight attendant crewmember, nor may any person serve as a flight attendant crewmember unless, since the beginning of the 12th month before that service, the program manager has determined by appropriate initial and recurrent testing that the person is knowledgeable and competent in the following areas as appropriate to assigned duties and responsibilities—

(a) Authority of the pilot in command;

(b) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety;

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation of persons who may need the assistance of another person to move expeditiously to an exit in an emergency;

(d) Briefing of passengers;

(e) Location and operation of portable fire extinguishers and other items of emergency equipment;

(f) Proper use of cabin equipment and controls;

(g) Location and operation of passenger oxygen equipment;

(h) Location and operation of all normal and emergency exits, including evacuation slides and escape ropes; and

(i) Seating of persons who may need assistance of another person to move rapidly to an exit in an emergency as prescribed by the program manager's operations manual.

§ 91.1069 Flight crew: Instrument proficiency check requirements.

(a) No program manager or owner may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No program manager or owner may use a pilot, nor may any person serve, as a second command pilot of an aircraft under IFR unless, since the beginning of the 12th month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(c) No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures must include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated must be conducted to published minimums for that procedure.

(d) The instrument proficiency checks required by paragraphs (a) and (b) of this section consists of either an oral or written equipment test (or a combination) and a flight check under simulated or actual IFR conditions. The equipment test includes questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use.

(e) Each pilot taking the instrument proficiency check must show that standard of competence required by § 91.1065(d).

(1) The instrument proficiency check must—

(i) For a pilot in command of an aircraft requiring that the PIC hold an airline transport pilot certificate, include the procedures and maneuvers for an airline transport pilot certificate in the particular type of aircraft, if appropriate; and

(ii) For a pilot in command of a rotorcraft or a second in command of any aircraft requiring that the SIC hold a commercial pilot certificate include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

(2) The instrument proficiency check must be given by an authorized check pilot or by the Administrator.

(f) If the pilot is assigned to pilot only one type of aircraft, that pilot must take the instrument proficiency check required by paragraph (a) of this section in that type of aircraft.

(g) If the pilot in command is assigned to pilot more than one type of aircraft, that pilot must take the instrument

proficiency check required by paragraph (a) of this section in each type of aircraft to which that pilot is assigned, in rotation, but not more than one flight check during each period described in paragraph (a) of this section.

(h) If the pilot in command is assigned to pilot both single-engine and multiengine aircraft, that pilot must initially take the instrument proficiency check required by paragraph (a) of this section in a multiengine aircraft, and each succeeding check alternately in single-engine and multiengine aircraft, but not more than one flight check during each period described in paragraph (a) of this section.

(i) All or portions of a required flight check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

§ 91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.

(a) If a crewmember who is required to take a test or a flight check under this subpart, completes the test or flight check in the month before or after the month in which it is required, that crewmember is considered to have completed the test or check in the month in which it is required.

(b) If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the program manager may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this subpart until the pilot has satisfactorily completed the check. If a pilot who demonstrates unsatisfactory performance is employed as a pilot for a certificate holder operating under part 121, 125, or 135 of this chapter, he or she must notify that certificate holder of the unsatisfactory performance.

§ 91.1073 Training program: General.

(a) Each program manager must have a training program and must:

(1) Establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and that ensures that each crewmember, including each flight attendant if the program manager uses a flight attendant crewmember, flight instructor, check pilot, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform these assigned duties.

(2) Provide adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart.

(3) Provide and keep current for each aircraft type used and, if applicable, the particular variations within the aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this subpart.

(4) Provide enough flight instructors, check pilots, and simulator instructors to conduct required flight training and flight checks, and simulator training courses allowed under this subpart.

(b) Whenever a crewmember who is required to take recurrent training under this subpart completes the training in the month before, or the month after, the month in which that training is required, the crewmember is considered to have completed it in the month in which it was required.

(c) Each instructor, supervisor, or check pilot who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this subpart must certify as to the proficiency and knowledge of the crewmember, flight instructor, or check pilot concerned upon completion of that training or check. That certification must be made a part of the crewmember's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check pilot, must be identified with that entry. However, the signature of the certifying instructor, supervisor, or check pilot is not required for computerized entries.

(d) Training subjects that apply to more than one aircraft or crewmember position and that have been satisfactorily completed during previous training while employed by the program manager for another aircraft or another crewmember position, need not be repeated during subsequent training other than recurrent training.

(e) Aircraft simulators and other training devices may be used in the program manager's training program if approved by the Administrator.

(f) Each program manager is responsible for establishing safe and efficient crew management practices for all phases of flight in program operations including crew resource management training for all crewmembers used in program operations.

(g) If an aircraft simulator has been approved by the Administrator for use in the program manager's training program, the program manager must ensure that each pilot annually completes at least one flight training session in an approved simulator for at least one program aircraft. The training session may be the flight training portion of any of the pilot training or check requirements of this subpart, including the initial, transition, upgrade, requalification, differences, or recurrent training, or the accomplishment of a competency check or instrument proficiency check. If there is no approved simulator for that aircraft type in operation, then all flight training and checking must be accomplished in the aircraft.

§ 91.1075 Training program: Special rules.

Other than the program manager, only the following are eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(a) Another program manager operating under this subpart:

(b) A training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this subpart if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructors and check pilots qualified under the applicable requirements of §§ 91.1089 through 91.1095 to conduct training, testing, and checking to persons subject to the requirements of this subpart.

(c) A part 119 certificate holder operating under part 121 or part 135 of this chapter.

(d) As authorized by the Administrator, a training center that is not certificated under part 142 of this chapter.

§ 91.1077 Training program and revision: Initial and final approval.

(a) To obtain initial and final approval of a training program, or a revision to an approved training program, each program manager must submit to the Administrator—

(1) An outline of the proposed or revised curriculum, that provides enough information for a preliminary evaluation of the proposed training program or revision; and

(2) Additional relevant information that may be requested by the Administrator.

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the program manager may conduct the training under that program. The Administrator then evaluates the effectiveness of the training program and advises the program manager of deficiencies, if any, that must be corrected.

(c) The Administrator grants final approval of the proposed training program or revision if the program manager shows that the training conducted under the initial approval in paragraph (b) of this section ensures that each person who successfully completes the training is adequately trained to perform that person's assigned duties.

(d) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted final approval, the program manager must, after notification by the Administrator, make any changes in the program that are found necessary by the Administrator. Within 30 days after the program manager receives the notice, it may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

§ 91.1079 Training program: Curriculum.

(a) Each program manager must prepare and keep current a written training program curriculum for each type of aircraft for each crewmember required for that type aircraft. The curriculum must include ground and flight training required by this subpart.

(b) Each training program curriculum must include the following:

(1) A list of principal ground training subjects, including emergency training subjects, that are provided.

(2) A list of all the training devices, mock-ups, systems trainers, procedures trainers, or other training aids that the program manager will use.

(3) Detailed descriptions or pictorial displays of the approved normal, abnormal, and emergency maneuvers, procedures and functions that will be performed during each flight training phase or flight check, indicating those maneuvers, procedures and functions that are to be performed during the inflight portions of flight training and flight checks.

§ 91.1081 Crewmember training requirements.

(a) Each program manager must include in its training program the following initial and transition ground training as appropriate to the particular assignment of the crewmember:

(1) Basic indoctrination ground training for newly hired crewmembers including instruction in at least the—

(i) Duties and responsibilities of crewmembers as applicable;

(ii) Appropriate provisions of this chapter;

(iii) Contents of the program manager's management specifications (not required for flight attendants); and

(iv) Appropriate portions of the program manager's operating manual.

(2) The initial and transition ground training in §§ 91.1101 and 91.1105, as applicable.

(3) Emergency training in § 91.1083.

(b) Each training program must provide the initial and transition flight training in § 91.1103, as applicable.

(c) Each training program must provide recurrent ground and flight training as provided in § 91.1107.

(d) Upgrade training in §§ 91.1101 and 91.1103 for a particular type aircraft may be included in the training program for crewmembers who have qualified and served as second in command on that aircraft.

(e) In addition to initial, transition, upgrade and recurrent training, each training program must provide ground and flight training, instruction, and practice necessary to ensure that each crewmember—

(1) Remains adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves; and

(2) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft.

§ 91.1083 Crewmember emergency training.

(a) Each training program must provide emergency training under this section for each aircraft type, model, and configuration, each crewmember, and each kind of operation conducted, as appropriate for each crewmember and the program manager.

(b) Emergency training must provide the following:

(1) Instruction in emergency assignments and procedures, including coordination among crewmembers.

(2) Individual instruction in the location, function, and operation of emergency equipment including—

(i) Equipment used in ditching and evacuation;

(ii) First aid equipment and its proper use; and

(iii) Portable fire extinguishers, with emphasis on the type of extinguisher to be used on different classes of fires.

(3) Instruction in the handling of emergency situations including—

(i) Rapid decompression;

(ii) Fire in flight or on the surface and smoke control procedures with emphasis on electrical equipment and related circuit breakers found in cabin areas;

(iii) Ditching and evacuation;

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers; and

(v) Hijacking and other unusual situations.

(4) Review and discussion of previous aircraft accidents and incidents involving actual emergency situations.

(c) Each crewmember must perform at least the following emergency drills, using the proper emergency equipment and procedures, unless the Administrator finds that, for a particular drill, the crewmember can be adequately trained by demonstration:

(1) Ditching, if applicable.

(2) Emergency evacuation.

(3) Fire extinguishing and smoke control.

(4) Operation and use of emergency exits, including deployment and use of evacuation slides, if applicable.

(5) Use of crew and passenger oxygen.

(6) Removal of life rafts from the aircraft, inflation of the life rafts, use of lifelines, and boarding of passengers and crew, if applicable.

(7) Donning and inflation of life vests and the use of other individual flotation devices, if applicable.

(d) Crewmembers who serve in operations above 25,000 feet must receive instruction in the following:

(1) Respiration.

(2) Hypoxia.

(3) Duration of consciousness without supplemental oxygen at altitude.

(4) Gas expansion.

(5) Gas bubble formation.

(6) Physical phenomena and incidents of decompression.

§ 91.1085 Hazardous materials recognition training.

No program manager may use any person to perform, and no person may perform, any assigned duties and

responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless that person has received training in the recognition of hazardous materials.

§ 91.1087 Approval of aircraft simulators and other training devices.

(a) Training courses using aircraft simulators and other training devices may be included in the program manager's training program if approved by the Administrator.

(b) Each aircraft simulator and other training device that is used in a training course or in checks required under this subpart must meet the following requirements:

(1) It must be specifically approved for—

(i) The program manager; and

(ii) The particular maneuver, procedure, or crewmember function involved.

(2) It must maintain the performance, functional, and other characteristics that are required for approval.

(3) Additionally, for aircraft simulators, it must be—

(i) Approved for the type aircraft and, if applicable, the particular variation within type for which the training or check is being conducted; and

(ii) Modified to conform with any modification to the aircraft being simulated that changes the performance, functional, or other characteristics required for approval.

(c) A particular aircraft simulator or other training device may be used by more than one program manager.

(d) In granting initial and final approval of training programs or revisions to them, the Administrator considers the training devices, methods, and procedures listed in the program manager's curriculum under § 91.1079.

§ 91.1089 Qualifications: Check pilots (aircraft) and check pilots (simulator).

(a) For the purposes of this section and § 91.1093:

(1) A check pilot (aircraft) is a person who is qualified to conduct flight checks in an aircraft, in a flight simulator, or in a flight training device for a particular type aircraft.

(2) A check pilot (simulator) is a person who is qualified to conduct flight checks, but only in a flight simulator, in a flight training device, or both, for a particular type aircraft.

(3) Check pilots (aircraft) and check pilots (simulator) are those check pilots who perform the functions described in § 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a check pilot (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093;

(5) Holds at least a Class III medical certificate unless serving as a required crewmember, in which case holds a Class I or Class II medical certificate as appropriate; and

(6) Has been approved by the Administrator for the check pilot duties involved.

(c) No program manager may use a person, nor may any person serve as a check pilot (simulator) in a training program established under this subpart unless, with respect to the aircraft type involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the applicable pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093; and

(5) Has been approved by the Administrator for the check pilot (simulator) duties involved.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, must be entered in the individual's training record maintained by the program manager.

(e) A check pilot who does not hold an appropriate medical certificate may function as a check pilot (simulator), but may not serve as a flightcrew member in operations under this subpart.

(f) A check pilot (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any check pilot duty in a flight simulator; or

(2) Before performing any check pilot duty in a flight simulator, satisfactorily complete an approved line-observation program within the period prescribed by that program.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered to be completed in the month required if completed in the month before or the month after the month in which they are due.

§ 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).

(a) For the purposes of this section and § 91.1095:

(1) A flight instructor (aircraft) is a person who is qualified to instruct in an aircraft, in a flight simulator, or in a flight training device for a particular type, class, or category aircraft.

(2) A flight instructor (simulator) is a person who is qualified to instruct in a flight simulator, in a flight training device, or in both, for a particular type, class, or category aircraft.

(3) Flight instructors (aircraft) and flight instructors (simulator) are those instructors who perform the functions described in § 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart or part 121 or 135 of this chapter;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1095; and

(5) Holds at least a Class III medical certificate.

(c) No program manager may use a person, nor may any person serve as a flight instructor (simulator) in a training

program established under this subpart, unless, with respect to the type, class, or category aircraft involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart or part 121 or 135 of this chapter;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart; and

(4) Has satisfactorily completed the applicable training requirements of § 91.1095.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, must be entered in the individual's training record maintained by the program manager.

(e) A pilot who does not hold a medical certificate may function as a flight instructor in an aircraft if functioning as a non-required crewmember, but may not serve as a flightcrew member in operations under this subpart.

(f) A flight instructor (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that must precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered completed in the month required if completed in the month before, or in the month after, the month in which they are due.

§ 91.1093 Initial and transition training and checking: Check pilots (aircraft), check pilots (simulator).

(a) No program manager may use a person nor may any person serve as a check pilot unless—

(1) That person has satisfactorily completed initial or transition check pilot training; and

(2) Within the preceding 24 months, that person satisfactorily conducts a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the month before or the month after the month in which it is due.

(c) The initial ground training for check pilots must include the following:

(1) Check pilot duties, functions, and responsibilities.

(2) The applicable provisions of the Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting the required checks.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory checks.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(d) The transition ground training for a check pilot must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aircraft to which the check pilot is in transition.

(e) The initial and transition flight training for a check pilot (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during a check;

(2) The potential results of improper, untimely, or nonexecution of safety measures during a check;

(3) Training and practice in conducting flight checks from the left and right pilot seats in the required normal, abnormal, and emergency procedures to ensure competence to conduct the pilot flight checks required by this subpart; and

(4) The safety measures to be taken from either pilot seat for emergency situations that are likely to develop during checking.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a check pilot (simulator) must include the following:

(1) Training and practice in conducting flight checks in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight checks required by this subpart. This training and practice must be accomplished in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight checks required by this subpart.

§ 91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).

(a) No program manager may use a person nor may any person serve as a flight instructor unless—

(1) That person has satisfactorily completed initial or transition flight instructor training; and

(2) Within the preceding 24 months, that person satisfactorily conducts instruction under the observation of an FAA inspector, a program manager check pilot, or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the month before, or the month after, the month in which it is due.

(c) The initial ground training for flight instructors must include the following:

(1) Flight instructor duties, functions, and responsibilities.

(2) The applicable Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting flight instruction.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory training progress.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(7) Except for holders of a flight instructor certificate—

(i) The fundamental principles of the teaching-learning process;

(ii) Teaching methods and procedures; and

(iii) The instructor-student relationship.

(d) The transition ground training for flight instructors must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the type, class, or category aircraft to which the flight instructor is in transition.

(e) The initial and transition flight training for flight instructors (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during instruction;

(2) The potential results of improper or untimely safety measures during instruction;

(3) Training and practice from the left and right pilot seats in the required normal, abnormal, and emergency maneuvers to ensure competence to conduct the flight instruction required by this subpart; and

(4) The safety measures to be taken from either the left or right pilot seat for emergency situations that are likely to develop during instruction.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a flight instructor (simulator) must include the following:

(1) Training and practice in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight instruction required by this subpart. These maneuvers and procedures must be accomplished in full or in part in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight instruction required by this subpart.

§ 91.1097 Pilot and flight attendant crewmember training programs.

(a) Each program manager must establish and maintain an approved pilot training program, and each program manager who uses a flight attendant crewmember must establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and flight attendant is to be assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of §§ 91.1065 through 91.1071.

(b) Each program manager required to have a training program by paragraph (a) of this section must include in that program ground and flight training curriculums for—

(1) Initial training;

(2) Transition training;

(3) Upgrade training;

(4) Differences training;

(5) Recurrent training; and

(6) Requalification training.

(c) Each program manager must provide current and appropriate study materials for use by each required pilot and flight attendant.

(d) The program manager must furnish copies of the pilot and flight attendant crewmember training program, and all changes and additions, to the assigned representative of the Administrator. If the program manager uses training facilities of other persons, a copy of those training programs or appropriate portions used for those facilities must also be furnished. Curricula that follow FAA published curricula may be cited by reference in the copy of the training program furnished to the representative of the Administrator and need not be furnished with the program.

§ 91.1099 Crewmember initial and recurrent training requirements.

No program manager may use a person, nor may any person serve, as a crewmember in operations under this subpart unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th month before that service.

§ 91.1101 Pilots: Initial, transition, and upgrade ground training.

Initial, transition, and upgrade ground training for pilots must include instruction in at least the following, as applicable to their duties:

(a) General subjects—

(1) The program manager's flight locating procedures;

(2) Principles and methods for determining weight and balance, and runway limitations for takeoff and landing;

(3) Enough meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, windshear and, if appropriate, high altitude weather situations;

(4) Air traffic control systems, procedures, and phraseology;

(5) Navigation and the use of navigational aids, including instrument approach procedures;

(6) Normal and emergency communication procedures;

(7) Visual cues before and during descent below Decision Altitude or MDA; and

(8) Other instructions necessary to ensure the pilot's competence.

(b) For each aircraft type—

(1) A general description;

(2) Performance characteristics;

(3) Engines and propellers;

(4) Major components;

(5) Major aircraft systems (that is, flight controls, electrical, and hydraulic), other systems, as appropriate, principles of normal, abnormal, and emergency operations, appropriate procedures and limitations;

(6) Knowledge and procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear);

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), inflight icing, hail, and other potentially hazardous meteorological conditions; and

(iv) Operating airplanes during ground icing conditions, (that is, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft), if the program manager expects to authorize takeoffs in ground icing conditions, including:

(A) The use of holdover times when using deicing/anti-icing fluids;

(B) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities;

(C) Communications;

(D) Airplane surface contamination (that is, adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics;

(E) Types and characteristics of deicing/anti-icing fluids, if used by the program manager;

(F) Cold weather preflight inspection procedures;

(G) Techniques for recognizing contamination on the airplane;

(7) Operating limitations;

(8) Fuel consumption and cruise control;

(9) Flight planning;

(10) Each normal and emergency procedure; and

(11) The approved Aircraft Flight Manual or equivalent.

§ 91.1103 Pilots: Initial, transition, upgrade, requalification, and differences flight training.

(a) Initial, transition, upgrade, requalification, and differences training for pilots must include flight and practice in each of the maneuvers and procedures contained in each of the curriculums that are a part of the approved training program.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed in flight, except to the extent that certain maneuvers and procedures may be performed in an aircraft simulator, or an appropriate training device, as allowed by this subpart.

(c) If the program manager's approved training program includes a course of training using an aircraft simulator or other training device, each pilot must successfully complete—

(1) Training and practice in the simulator or training device in at least the maneuvers and procedures in this subpart that are capable of being performed in the aircraft simulator or training device; and

(2) A flight check in the aircraft or a check in the simulator or training device to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures that are capable of being performed in an aircraft simulator or training device.

§ 91.1105 Flight attendants: Initial and transition ground training.

Initial and transition ground training for flight attendants must include instruction in at least the following—

(a) General subjects—

(1) The authority of the pilot in command; and

(2) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety.

(b) For each aircraft type—

(1) A general description of the aircraft emphasizing physical characteristics that may have a bearing on ditching, evacuation, and inflight emergency procedures and on other related duties;

(2) The use of both the public address system and the means of communicating with other flight crewmembers, including emergency means in the case of attempted hijacking or other unusual situations; and

(3) Proper use of electrical galley equipment and the controls for cabin heat and ventilation.

§ 91.1107 Recurrent training.

(a) Each program manager must ensure that each crewmember receives recurrent training and is adequately trained and currently proficient for the type aircraft and crewmember position involved.

(b) Recurrent ground training for crewmembers must include at least the following:

(1) A quiz or other review to determine the crewmember's knowledge of the aircraft and crewmember position involved.

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions, as prescribed in § 91.1097 and described in § 91.1101, and emergency training.

(c) Recurrent flight training for pilots must include, at least, flight training in the maneuvers or procedures in this subpart, except that satisfactory completion of the check required by § 91.1065 within the preceding 12 months may be substituted for recurrent flight training.

§ 91.1109 Aircraft maintenance: Inspection program.

Each program manager must establish an aircraft inspection program for each make and model program aircraft and ensure each aircraft is inspected in accordance with that inspection program.

(a) The inspection program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be accomplished under the inspection program expressed in terms of the time in service, calendar time, number of system operations, or any combination thereof.

(3) The name and address of the person responsible for scheduling the inspections required by the inspection program. A copy of the inspection program must be made available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(b) Each person desiring to establish or change an approved inspection program under this section must submit the inspection program for approval to the Flight Standards District Office that issued the program manager's management specifications. The inspection program must be derived from one of the following programs:

(1) An inspection program currently recommended by the manufacturer of the aircraft, aircraft engines, propellers, appliances, and survival and emergency equipment;

(2) An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier or operating certificate issued under part 119 of this chapter and operating that make and model aircraft under part 121 or 135 of this chapter;

(3) An aircraft inspection program approved under § 135.419 of this chapter and currently in use under part 135 of this chapter by a person holding a certificate issued under part 119 of this chapter; or

(4) An airplane inspection program approved under § 125.247 of this chapter and currently in use under part 125 of this chapter.

(5) An inspection program that is part of the program manager's continuous airworthiness maintenance program under §§ 91.1411 through 91.1443.

(c) The Administrator may require revision of the inspection program approved under this section in accordance with the provisions of § 91.415.

§ 91.1111 Maintenance training.

The program manager must ensure that all employees who are responsible for maintenance related to program aircraft undergo appropriate initial and annual recurrent training and are competent to perform those duties.

§ 91.1113 Maintenance recordkeeping.

Each fractional ownership program manager must keep (using the system specified in the manual required in § 91.1025) the records specified in § 91.417(a) for the periods specified in § 91.417(b).

§ 91.1115 Inoperable instruments and equipment.

(a) No person may take off an aircraft with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved Minimum Equipment List exists for that aircraft.

(2) The program manager has been issued management specifications authorizing operations in accordance

with an approved Minimum Equipment List. The flight crew must have direct access at all times prior to flight to all of the information contained in the approved Minimum Equipment List through printed or other means approved by the Administrator in the program manager's management specifications. An approved Minimum Equipment List, as authorized by the management specifications, constitutes an approved change to the type design without requiring recertification.

(3) The approved Minimum Equipment List must:

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section.

(ii) Provide for the operation of the aircraft with certain instruments and equipment in an inoperable condition.

(4) Records identifying the inoperable instruments and equipment and the information required by (a)(3)(ii) of this section must be available to the pilot.

(5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the management specifications authorizing use of the Minimum Equipment List.

(b) The following instruments and equipment may not be included in the Minimum Equipment List:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the airplane is type certificated and that are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.

(3) Instruments and equipment required for specific operations by this part.

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

(d) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under part 121, 125, or 135 of this chapter must use that Minimum Equipment List to comply with this section.

§ 91.1411 Continuous airworthiness maintenance program use by fractional ownership program manager.

Fractional ownership program aircraft may be maintained under a continuous airworthiness maintenance program (CAMP) under §§ 91.1413 through 91.1443. Any program manager who elects to maintain the program aircraft using a continuous airworthiness maintenance program must comply with §§ 91.1413 through 91.1443.

§ 91.1413 CAMP: Responsibility for airworthiness.

(a) For aircraft maintained in accordance with a Continuous Airworthiness Maintenance Program, each program manager is primarily responsible for the following:

(1) Maintaining the airworthiness of the program aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts.

(2) Maintaining its aircraft in accordance with the requirements of this chapter.

(3) Repairing defects that occur between regularly scheduled maintenance required under part 43 of this chapter.

(b) Each program manager who maintains program aircraft under a CAMP must—

(1) Employ a Director of Maintenance or equivalent position. The Director of Maintenance must be a certificated mechanic with airframe and powerplant ratings who has responsibility for the maintenance program on all program aircraft maintained under a continuous airworthiness maintenance program. This person cannot also act as Chief Inspector.

(2) Employ a Chief Inspector or equivalent position. The Chief Inspector must be a certificated mechanic with airframe and powerplant ratings who has overall responsibility for inspection aspects of the CAMP. This person cannot also act as Director of Maintenance.

(3) Have the personnel to perform the maintenance of program aircraft, including airframes, aircraft engines, propellers, rotors, appliances, emergency equipment and parts, under its manual and this chapter; or make arrangements with another person for the performance of maintenance. However, the program manager must ensure that any maintenance, preventive maintenance, or alteration that is performed by another person is performed under the program manager's operating manual and this chapter.

§ 91.1415 CAMP: Mechanical reliability reports.

(a) Each program manager who maintains program aircraft under a CAMP must report the occurrence or detection of each failure, malfunction, or defect in an aircraft concerning—

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight not protected by related fire-warning system;

(3) False fire-warning during flight;

(4) An exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;

(5) An aircraft component that causes accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;

(6) Engine shutdown during flight because of flameout;

(7) Engine shutdown during flight when external damage to the engine or aircraft structure occurs;

(8) Engine shutdown during flight because of foreign object ingestion or icing;

(9) Shutdown of more than one engine during flight;

(10) A propeller feathering system or ability of the system to control overspeed during flight;

(11) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(12) An unwanted landing gear extension or retraction or opening or closing of landing gear doors during flight;

(13) Brake system components that result in loss of brake actuating force when the aircraft is in motion on the ground;

(14) Aircraft structure that requires major repair;

(15) Cracks, permanent deformation, or corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA; and

(16) Aircraft components or systems that result in taking emergency actions during flight (except action to shut down an engine).

(b) For the purpose of this section, *during flight* means the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each program manager must report any other failure, malfunction, or defect in an aircraft that occurs or is detected at any time if, in the manager's opinion, the failure, malfunction, or defect has endangered or may endanger the safe operation of the aircraft.

(d) Each program manager must send each report required by this section, in writing, covering each 24-hour period beginning at 0900 hours local time of each day and ending at 0900 hours local time on the next day to the Flight Standards District Office that issued the program manager's management specifications. Each report of

occurrences during a 24-hour period must be mailed or transmitted to that office within the next 72 hours. However, a report that is due on Saturday or Sunday may be mailed or transmitted on the following Monday and one that is due on a holiday may be mailed or transmitted on the next workday. For aircraft operated in areas where mail is not collected, reports may be mailed or transmitted within 72 hours after the aircraft returns to a point where the mail is collected.

(e) The program manager must transmit the reports required by this section on a form and in a manner prescribed by the Administrator, and must include as much of the following as is available:

(1) The type and identification number of the aircraft.

(2) The name of the program manager.

(3) The date.

(4) The nature of the failure, malfunction, or defect.

(5) Identification of the part and system involved, including available information pertaining to type designation of the major component and time since last overhaul, if known.

(6) Apparent cause of the failure, malfunction or defect (for example, wear, crack, design deficiency, or personnel error).

(7) Other pertinent information necessary for more complete identification, determination of seriousness, or corrective action.

(f) A program manager that is also the holder of a type certificate (including a supplemental type certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(g) No person may withhold a report required by this section even when not all information required by this section is available.

(h) When the program manager receives additional information, including information from the manufacturer or other agency, concerning a report required by this section, the program manager must expeditiously submit it as a supplement to the first report and reference the date and place of submission of the first report.

§ 91.1417 CAMP: Mechanical interruption summary report.

Each program manager who maintains program aircraft under a CAMP must mail or deliver, before the end of the 10th day of the following month, a summary report of the following occurrences in multiengine aircraft for the preceding month to the Flight Standards District Office that issued the management specifications:

(a) Each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 91.1415.

(b) The number of propeller featherings in flight, listed by type of propeller and engine and aircraft on which it was installed. Propeller featherings for training, demonstration, or flight check purposes need not be reported.

§ 91.1423 CAMP: Maintenance organization.

(a) Each program manager who maintains program aircraft under a CAMP that has its personnel perform any of its maintenance (other than required inspections), preventive maintenance, or alterations, and each person with whom it arranges for the performance of that work, must have an organization adequate to perform the work.

(b) Each program manager who has personnel perform any inspections required by the program manager's manual under § 91.1427(b) (2) or (3), (in this subpart referred to as required inspections), and each person with whom the program manager arranges for the performance of that work, must have an organization adequate to perform that work.

(c) Each person performing required inspections in addition to other maintenance, preventive maintenance, or alterations, must organize the performance of those functions so as to separate the required inspection functions from the other maintenance, preventive maintenance, or alteration functions. The separation must be below the level of administrative control at which overall responsibility for the required inspection functions and other maintenance, preventive maintenance, or alterations is exercised.

§ 91.1425 CAMP: Maintenance, preventive maintenance, and alteration programs.

Each program manager who maintains program aircraft under a CAMP must have an inspection program and a program covering other maintenance, preventive maintenance, or alterations that ensures that—

(a) Maintenance, preventive maintenance, or alterations performed by its personnel, or by other persons, are performed under the program manager's manual;

(b) Competent personnel and adequate facilities and equipment are provided for the proper performance of maintenance, preventive maintenance, or alterations; and

(c) Each aircraft released to service is airworthy and has been properly maintained for operation under this part.

§ 91.1427 CAMP: Manual requirements.

(a) Each program manager who maintains program aircraft under a CAMP must put in the operating manual the chart or description of the program manager's organization required by § 91.1423 and a list of persons with whom it has arranged for the performance of any of its required inspections, and other maintenance, preventive maintenance, or alterations, including a general description of that work.

(b) Each program manager must put in the operating manual the programs required by § 91.1425 that must be followed in performing maintenance, preventive maintenance, or alterations of that program manager's aircraft, including airframes, aircraft engines, propellers, rotors, appliances, emergency equipment, and parts, and must include at least the following:

(1) The method of performing routine and nonroutine maintenance (other than required inspections), preventive maintenance, or alterations.

(2) A designation of the items of maintenance and alteration that must be inspected (required inspections) including at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not performed properly or if improper parts or materials are used.

(3) The method of performing required inspections and a designation by occupational title of personnel authorized to perform each required inspection.

(4) Procedures for the reinspection of work performed under previous required inspection findings (buy-back procedures).

(5) Procedures, standards, and limits necessary for required inspections and acceptance or rejection of the items required to be inspected and for periodic inspection and calibration of precision tools, measuring devices, and test equipment.

(6) Procedures to ensure that all required inspections are performed.

(7) Instructions to prevent any person who performs any item of work from

performing any required inspection of that work.

(8) Instructions and procedures to prevent any decision of an inspector regarding any required inspection from being countermanded by persons other than supervisory personnel of the inspection unit, or a person at the level of administrative control that has overall responsibility for the management of both the required inspection functions and the other maintenance, preventive maintenance, or alterations functions.

(9) Procedures to ensure that maintenance (including required inspections), preventive maintenance, or alterations that are not completed because of work interruptions are properly completed before the aircraft is released to service.

(c) Each program manager must put in the manual a suitable system (which may include an electronic or coded system) that provides for the retention of the following information —

(1) A description (or reference to data acceptable to the Administrator) of the work performed;

(2) The name of the person performing the work if the work is performed by a person outside the organization of the program manager; and

(3) The name or other positive identification of the individual approving the work.

(d) For the purposes of this part, the program manager must prepare that part of its manual containing maintenance information and instructions, in whole or in part, in a format acceptable to the Administrator, that is retrievable in the English language.

§ 91.1429 CAMP: Required inspection personnel.

(a) No person who maintains an aircraft under a CAMP may use any person to perform required inspections unless the person performing the inspection is appropriately certificated, properly trained, qualified, and authorized to do so.

(b) No person may allow any person to perform a required inspection unless, at the time the work was performed, the person performing that inspection is under the supervision and control of the chief inspector.

(c) No person may perform a required inspection if that person performed the item of work required to be inspected.

(d) Each program manager must maintain, or must ensure that each person with whom it arranges to perform required inspections maintains, a current listing of persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are authorized to perform. The program manager (or person with whom it arranges to perform its required inspections) must give written information to each person so authorized, describing the extent of that person's responsibilities, authorities, and inspectional limitations. The list must be made available for inspection by the Administrator upon request.

§ 91.1431 CAMP: Continuing analysis and surveillance.

(a) Each program manager who maintains program aircraft under a CAMP must establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection program and the program covering other maintenance, preventive maintenance, and alterations and for the correction of any deficiency in those programs, regardless of whether those programs are carried out by employees of the program manager or by another person.

(b) Whenever the Administrator finds that the programs described in paragraph (a) of this section does not contain adequate procedures and standards to meet this part, the program manager must, after notification by the Administrator, make changes in those programs requested by the Administrator.

(c) A program manager may petition the Administrator to reconsider the notice to make a change in a program. The petition must be filed with the Director, Flight Standards Service, within 30 days after the program manager receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 91.1433 CAMP: Maintenance and preventive maintenance training program.

Each program manager who maintains program aircraft under a CAMP or a person performing maintenance or preventive maintenance functions for it must have a training program to ensure that each person (including inspection personnel) who determines the adequacy of work done is fully informed about procedures and techniques and new equipment in use and is competent to perform that person's duties.

§ 91.1435 CAMP: Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by repair stations located outside the United States certificated under the provisions of part 145 of this chapter, each person who is directly in charge of maintenance, preventive maintenance, or alterations for a CAMP, and each person performing required inspections for a CAMP must hold an appropriate airman certificate.

(b) For the purpose of this section, a person ''directly in charge'' is each person assigned to a position in which that person is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting airworthiness. A person who is directly in charge need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the person performing the work.

§ 91.1437 CAMP: Authority to perform and approve maintenance.

A program manager who maintains program aircraft under a CAMP may employ maintenance personnel, or make arrangements with other persons to perform maintenance and preventive maintenance as provided in its maintenance manual. Unless properly certificated, the program manager may not perform or approve maintenance for return to service.

§ 91.1439 CAMP: Maintenance recording requirements.

(a) Each program manager who maintains program aircraft under a CAMP must keep (using the system specified in the manual required in § 91.1427) the following records for the periods specified in paragraph (b) of this section:

(1) All the records necessary to show that all requirements for the issuance of an airworthiness release under § 91.1443 have been met.

(2) Records containing the following information:

(i) The total time in service of the airframe, engine, propeller, and rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of each item installed on the aircraft that are required to be overhauled on a specified time basis.

(iv) The identification of the current inspection status of the aircraft, including the time since the last inspections required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives, including the

date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vi) A list of current major alterations and repairs to each airframe, engine, propeller, rotor, and appliance.

(b) Each program manager must retain the records required to be kept by this section for the following periods:

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, rotor, and appliance the records specified in paragraph (a)(1) of this section must be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, rotor, and appliance must be retained until the work is superseded by work of equivalent scope and detail.

(3) The records specified in paragraph (a)(2) of this section must be retained as specified unless transferred with the aircraft at the time the aircraft is sold.

(c) The program manager must make all maintenance records required to be kept by this section available for inspection by the Administrator or any representative of the National Transportation Safety Board.

§ 91.1441 CAMP: Transfer of maintenance records.

When a U.S.-registered fractional ownership program aircraft maintained under a CAMP is removed from the list of program aircraft in the management specifications, the program manager must transfer to the purchaser, at the time of the sale, the following records of that aircraft, in plain language form or in coded form that provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 91.1439(a)(2).

(b) The records specified in § 91.1439(a)(1) that are not included in the records covered by paragraph (a) of this section, except that the purchaser may allow the program manager to keep physical custody of such records. However, custody of records by the program manager does not relieve the purchaser of its responsibility under § 91.1439(c) to make the records available for inspection by the Administrator or any representative of the National Transportation Safety Board.

§ 91.1443 CAMP: Airworthiness release or aircraft maintenance log entry.

(a) No program aircraft maintained under a CAMP may be operated after maintenance, preventive maintenance, or alterations are performed unless qualified, certificated personnel employed by the program manager prepare, or cause the person with whom the program manager arranges for the performance of the maintenance, preventive maintenance, or alterations, to prepare—

(1) An airworthiness release; or

(2) An appropriate entry in the aircraft maintenance log.

(b) The airworthiness release or log entry required by paragraph (a) of this section must—

(1) Be prepared in accordance with the procedure in the program manager's manual;

(2) Include a certification that—

(i) The work was performed in accordance with the requirements of the program manager's manual;

(ii) All items required to be inspected were inspected by an authorized person who determined that the work was satisfactorily completed;

(iii) No known condition exists that would make the aircraft unairworthy;

(iv) So far as the work performed is concerned, the aircraft is in condition for safe operation; and

(3) Be signed by an authorized certificated mechanic.

(c) Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station certificated under the provisions of part 145 of this chapter, the approval for return to service or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

(d) Instead of restating each of the conditions of the certification required by paragraph (b) of this section, the program manager may state in its manual that the signature of an authorized certificated mechanic or repairman constitutes that certification.

■ 22. Amend appendix G to part 91 by revising paragraphs (a), (b)(2), and (b)(3) of Section 3 and the introductory text of Section 7 to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

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Section 3. Operator Authorization

(a) Authority for an operator to conduct flight in airspace where RVSM is applied is issued in operations specifications, a Letter of Authorization, or management specifications issued under subpart K of this part, as appropriate. To issue an RVSM authorization, the Administrator must find that the operator's aircraft have been approved in accordance with Section 2 of this appendix and the operator complies with this section.

(b) * * *

(2) For an applicant who operates under part 121 or 135 of this chapter or under subpart K of this part, initial and recurring pilot training requirements.

(3) Policies and procedures: An applicant who operates under part 121 or 135 of this chapter or under subpart K of this part must submit RVSM policies and procedures that will enable it to conduct RVSM operations safely.

* * * * *

Section 7. Removal or Amendment of Authority

The Administrator may amend operations specifications or management specifications issued under subpart K of this part to revoke or restrict an RVSM authorization, or may revoke or restrict an RVSM letter of authorization, if the Administrator determines that the operator is not complying, or is unable to comply, with this appendix or subpart H of this part. Examples of reasons for amendment, revocation, ore restriction include, but are not limited to, an operator's:

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 23. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 24. Amend § 119.1 by revising paragraph (d) to read as follows:

§ 119.1 Applicability.

* * * * *

(d) This part does not govern operations conducted under part 91, subpart K (when common carriage is not involved) nor does it govern operations conducted under part 129, 133, 137, or 139 of this chapter.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

■ 25. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 26. Amend § 125.1 by revising paragraphs (b)(4) and (5) and by adding paragraphs (b)(6) and (b)(7) as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

(5) They are being operated under a deviation authority issued under § 125.3;

(6) They are being operated under part 91, subpart K by a fractional owner as defined in § 91.1001 of this chapter; or

(7) They are being operated by a fractional ownership program manager as defined in § 91.1001 of this chapter, for training, ferrying, positioning, maintenance, or demonstration purposes under part 91 of this chapter and without carrying passengers or cargo for compensation or hire except as permitted for demonstration flights under § 91.501(b)(3) of this chapter.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 27. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 28. Add § 135.4 to read as follows:

§ 135.4 Applicability of rules for eligible on-demand operations.

(a) An ''eligible on-demand operation'' is an on-demand operation conducted under this part that meets the following requirements:

(1) *Two-pilot crew.* The flightcrew must consist of at least two qualified pilots employed or contracted by the certificate holder.

(2) *Flight crew experience.* The crewmembers must have met the applicable requirements of part 61 of this chapter and have the following experience and ratings:

(i) Total flight time for all pilots:

(A) Pilot in command—A minimum of 1,500 hours.

(B) Second in command—A minimum of 500 hours.

(ii) For multi-engine turbine-powered fixed-wing and powered-lift aircraft, the following FAA certification and ratings requirements:

(A) Pilot in command—Airline transport pilot and applicable type ratings.

(B) Second in command—Commercial pilot and instrument ratings.

(iii) For all other aircraft, the following FAA certification and rating requirements:

(A) Pilot in command—Commercial pilot and instrument ratings.

(B) Second in command—Commercial pilot and instrument ratings.

(3) *Pilot operating limitations.* If the second in command of a fixed-wing aircraft has fewer than 100 hours of flight time as second in command flying in the aircraft make and model and, if a type rating is required, in the type aircraft being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command shall make all takeoffs and landings in any of the following situations:

(i) Landings at the destination airport when a Destination Airport Analysis is required by § 135.385(f); and

(ii) In any of the following conditions:

(A) The prevailing visibility for the airport is at or below \¾\ mile.

(B) The runway visual range for the runway to be used is at or below 4,000 feet.

(C) The runway to be used has water, snow, slush, ice, or similar contamination that may adversely affect aircraft performance.

(D) The braking action on the runway to be used is reported to be less than ''good.''

(E) The crosswind component for the runway to be used is in excess of 15 knots.

(F) Windshear is reported in the vicinity of the airport.

(G) Any other condition in which the pilot in command determines it to be prudent to exercise the pilot in command's authority.

(4) *Crew pairing.* Either the pilot in command or the second in command must have at least 75 hours of flight time in that aircraft make or model and, if a type rating is required, for that type aircraft, either as pilot in command or second in command.

(b) The Administrator may authorize deviations from paragraphs (a)(2)(i) or (a)(4) of this section if the Flight Standards District Office that issued the certificate holder's operations specifications finds that the crewmember has comparable experience, and can effectively perform the functions associated with the position in accordance with the requirements of this chapter. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation, the qualifications of the intended personnel and the following circumstances:

(1) A newly authorized certificate holder does not employ any pilots who meet the minimum requirements of paragraphs (a)(2)(i) or (a)(4) of this section.

(2) An existing certificate holder adds to its fleet a new category and class aircraft not used before in its operation.

(3) An existing certificate holder establishes a new base to which it assigns pilots who will be required to become qualified on the aircraft operated from that base.

(c) An eligible on-demand operation may comply with alternative requirements specified in §§ 135.225(b), 135.385(f), and 135.387(b) instead of the requirements that apply to other on-demand operations.

■ 29. Amend § 135.21 by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 135.21 Manual requirements.

* * * * *

(f) Except as provided in paragraph (h) of this section, each certificate holder must carry appropriate parts of the manual on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes all or part of the manual in other than printed form, it must ensure there is a compatible reading device available to those persons that provides a legible image of the information and instructions, or a system that is able to retrieve the information and instructions in the English language.

(h) If a certificate holder conducts aircraft inspections or maintenance at specified stations where it keeps the approved inspection program manual, it is not required to carry the manual aboard the aircraft en route to those stations.

■ 30. Amend § 135.23 by revising paragraph (r) and adding paragraph (s) to read as follows:

§ 135.23 Manual contents.

* * * * *

(r) If required by § 135.385, an approved Destination Airport Analysis establishing runway safety margins at destination airports, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required;

(7) Airplane inoperative equipment;

(8) Environmental conditions; and

(9) Other criteria affecting aircraft performance.

(s) Other procedures and policy instructions regarding the certificate holder's operations issued by the certificate holder.

■ 31. Revise § 135.145 to read as follows:

§ 135.145 Aircraft proving and validation tests.

(a) No certificate holder may operate an aircraft, other than a turbojet aircraft, for which two pilots are required by this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of en route airports as determined by the Administrator.

(b) No certificate holder may operate a turbojet airplane if it has not previously proved a turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of en route airports as determined by the Administrator.

(c) No certificate holder may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(d) Validation testing is required to determine that a certificate holder is capable of conducting operations safely and in compliance with applicable regulatory standards. Validation tests are required for the following authorizations:

(1) The addition of an aircraft for which two pilots are required for operations under VFR or a turbojet airplane, if that aircraft or an aircraft of the same make or similar design has not been previously proved or validated in operations under this part.

(2) Operations outside U.S. airspace.

(3) Class II navigation authorizations.

(4) Special performance or operational authorizations.

(e) Validation tests must be accomplished by test methods acceptable to the Administrator. Actual flights may not be required when an applicant can demonstrate competence and compliance with appropriate regulations without conducting a flight.

(f) Proving tests and validation tests may be conducted simultaneously when appropriate.

(g) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

■ 32. Amend § 135.167 by revising paragraph (a) introductory text to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

(a) Except where the Administrator, by amending the operations specifications of the certificate holder, requires the carriage of all or any specific items of the equipment listed below for any overwater operation, or, upon application of the certificate holder, the Administrator allows deviation for a particular extended overwater operation, no person may operate an aircraft in extended overwater operations unless it carries, installed in conspicuously marked locations easily accessible to the occupants if a ditching occurs, the following equipment:

* * * * *

■ 33. Amend § 135.179 by revising paragraph (c) to read as follows:

§ 135.179 Inoperable instruments and equipment.

* * * * *

(c) Notwithstanding paragraphs (b)(1) and (b)(3) of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit under §§ 21.197 and 21.199 of this chapter.

■ 34. Amend § 135.225 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (h) as paragraphs (c) through (i), adding new paragraph (b), and revising redesignated paragraphs (d) and (h) to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

(a) Except to the extent permitted by paragraph (b) of this section, no pilot may begin an instrument approach procedure to an airport unless—

* * * * *

(b) A pilot conducting an eligible on-demand operation may begin an instrument approach procedure to an airport that does not have a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator if—

(1) The alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting for the destination airport is available, the pilot may use the current altimeter setting provided by the facility designated on the approach chart for the destination airport.

* * * * *

(d) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—

* * * * *

(h) Except as provided in paragraph (i) of this section, if takeoff minimums are not prescribed in part 97 of this chapter for the takeoff airport, no pilot may takeoff an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than that prescribed in part 91 of this chapter or in the certificate holder's operations specifications.

* * * * *

■ 35. Amend § 135.247 by adding paragraph (a)(3) to read as follows:

§ 135.247 Pilot qualifications: Recent experience.

(a) * * *

(3) Paragraph (a)(2) of this section does not apply to a pilot in command of a turbine-powered airplane that is type certificated for more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (a)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane that is type certificated for more than one pilot crewmember, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane that is type certificated for more than one pilot crewmember, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

■ 36. Amend § 135.251 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.251 Testing for prohibited drugs.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in appendix I part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix I to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

■ 37. Amend § 135.255 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 135.255 Testing for alcohol.

* * * * *

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any person who meets the definition of ''covered employee'' in appendix J to part 121 of this chapter to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix J to part 121 of this chapter and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM–800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled, and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

■ 38. Revise § 135.291 paragraph (b) to read as follows:

§ 135.291 Applicability.

* * * * *

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of §§ 135.337 and 135.339 to conduct training, testing, and checking under contract or other arrangement to those

persons subject to the requirements of this subpart.

■ 39. Amend § 135.321 by revising paragraph (b)(7) to read as follows:

§ 135.321 Applicability and terms used.

* * * * *

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

* * * * *

■ 40. Amend § 135.324 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 135.324 Training program: Special rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this part only if the training center—

* * * * *

■ 41. Amend § 135.385 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 135.385 Large transport category airplanes: Turbine engine powered: Landing limitations: Destination airports.

* * * * *

(b) Except as provided in paragraph (c), (d), (e), or (f) of this section, no person operating a turbine engine powered large transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions expected there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

* * * * *

(f) An eligible on-demand operator may take off a turbine engine powered large transport category airplane on an on-demand flight if all of the following conditions exist:

(1) The operation is permitted by an approved Destination Airport Analysis in that person's operations manual.

(2) The airplane's weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions expected there at the time of landing), would allow a full stop landing at the intended destination airport within 80 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(i) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(ii) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(3) The operation is authorized by operations specifications.

■ 42. Revise § 135.387 to read as follows:

§ 135.387 Large transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.

(a) Except as provided in paragraph (b) of this section, no person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in § 135.385(b)) that airplane, at the weight expected at the time of arrival, can be brought to a full stop landing within 70 percent of the effective length of the runway for turbo-propeller-powered airplanes and 60 percent of the effective length of the runway for turbojet airplanes, from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(b) Eligible on-demand operators may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in § 135.385(f)) that airplane, at the weight expected at the time of arrival, can be brought to a full stop landing within 80 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

PART 142 —TRAINING CENTERS

■ 43. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 44. Amend § 142.1 by revising paragraph (a), republishing paragraph (b) introductory text, revising paragraphs (b)(1), (b)(4) and (b)(5), and adding paragraph (b)(6) as set forth below, and by removing paragraph (c):

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 91, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 91, 121, 127, 135, or 137 of this chapter;

* * * * *

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder;

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder; or

(6) Conducted by a part 91 fractional ownership program manager for another part 91 fractional ownership program manager.

Issued in Washington, DC, on August 27, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–23021 Filed 9–16–03; 8:45 am]

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Federal Register

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Part III

Securities and Exchange Commission

17 CFR Parts 240 and 249

Foreign Bank Exemption From the Insider Lending Prohibition of Exchange Act Section 13(k); Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–48481, International Series Release No. 1272; File No. S7–15–03]

RIN 3235–AI81

Foreign Bank Exemption From the Insider Lending Prohibition of Exchange Act Section 13(k)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to exempt qualified foreign banks from the insider lending prohibition under Section 13(k) of the Securities Exchange Act of 1934, as added by Section 402 of the Sarbanes-Oxley Act. This section prohibits both domestic and foreign issuers from making or arranging for loans to their directors and executive officers unless the loans fall within the scope of specified exemptions. One of these exemptions permits certain insider lending by a bank or other depository institution that is insured under the Federal Deposit Insurance Act. Foreign banks whose securities are registered with the Securities and Exchange Commission are not eligible for the bank exemption under Section 13(k). The proposed rule would remedy this disparate treatment of foreign banks by exempting from Section 13(k)'s insider lending prohibition those foreign banks that meet specified criteria similar to those that qualify domestic banks for this statutory exemption.

DATES: Please submit your comments on or before October 17, 2003.

ADDRESSES: Send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following electronic mail address: *rule-comments@sec.gov*. Your comment letter should refer to File No. S7–15–03; include this file number in the subject line if you use electronic mail. To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We will post electronically submitted comment letters on our Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We propose to add Rule 13k–1 [2] and amend Form 20–F [3] under the Securities Exchange Act of 1934.[4]

I. Background

In the wake of well-publicized corporate scandals, Congress enacted Section 402 of the Sarbanes-Oxley Act [5] in order to prevent corporations from issuing personal loans to their executives.[6] This section added Section 13(k), entitled ''Prohibition on Personal Loans to Executives,'' to the Exchange Act.[7] Section 13(k)(1) prohibits any issuer from directly or indirectly extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit ''in the form of a personal loan'' to or for any director or executive officer of that issuer.[8] Because the Sarbanes-Oxley Act's definition of issuer draws no distinction between U.S. and non-U.S. companies, Section 402's insider lending prohibition applies to any domestic or foreign entity that has Exchange Act reporting obligations or that has filed a registration statement under the Securities Act of 1933[9] that, although not yet effective, has not been withdrawn.[10]

Four categories of personal loans are expressly exempt from Section 402's prohibition:

(1) any extension of credit existing before the Sarbanes-Oxley Act's enactment as long as no material modification or renewal of the extension of credit occurs on or after the date of enactment;[11]

(2) specified home improvement and consumer credit loans if:

- Made in the ordinary course of the issuer's consumer credit business,
- of a type generally made available to the public by the issuer, and
- on terms no more favorable than those offered to the public;

(3) loans by a broker-dealer to its employees that:

- Fulfill the three conditions of paragraph (2) above,
- are made to buy, trade or carry securities other than the broker-dealer's securities, and
- are permitted by applicable Federal Reserve System regulations;[12] and

(4) ''any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).''[13]

This last exemption applies only to an ''insured depository institution,'' which, as defined by the Federal Deposit Insurance Act (''FDIA''),[14] is a bank or savings association that has insured its deposits with the Federal Deposit Insurance Corporation (''FDIC'').[15] Although this Section 402 provision does not explicitly exclude foreign banks from the exemption, under current U.S. banking regulation a foreign bank cannot be an ''insured depository institution'' and, therefore, cannot qualify for the bank exemption. Since 1991, following enactment of the Foreign Bank Supervision Enhancement Act (''FBSEA''), a foreign bank that seeks to accept and maintain FDIC-insured retail deposits in the United States must establish a U.S. subsidiary, rather than a branch, agency or other entity, for that purpose.[16] These U.S. subsidiaries of foreign banks, and the limited number of grandfathered U.S. branches of foreign banks that had obtained FDIC insurance prior to FBSEA's enactment,[17] can engage in FDIC-insured, retail deposit activities and, thus, qualify as ''insured depository institutions.'' But the foreign banks that own the U.S. insured depository subsidiaries or operate the grandfathered insured depository branches are not themselves ''insured

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Proposed 17 CFR 240.13k–1.

[3] 17 CFR 249.220f.

[4] 15 U.S.C. 78a *et. seq.* (''Exchange Act'').

[5] Pub. L. 107–204, 116 Stat. 745 (2002).

[6] *See* Senator Charles Schumer's remarks in 148 Cong. Rec. S. 7350, 7360–7361 (July 25, 2002). *See also* Senator Carl Levin's letter, dated September 25, 2002, to Chairman Harvey Pitt, reprinted in 149 Cong. Rec. S. 2178, 2179–2180 (February 11, 2003).

[7] 15 U.S.C. 78m(k).

[8] 15 U.S.C. 78m(k)(1). Section 13(k)(1) further prohibits personal loans to an issuer's executive officers or directors by any subsidiary of that issuer.

[9] 15 U.S.C. 77a *et seq.* (''Securities Act'').

[10] Sarbanes-Oxley Act Section (2)(a)(7).

[11] Exchange Act Section 13(k)(1).

[12] Exchange Act Section 13(k)(2) [15 U.S.C. 78m(k)(2)] establishes the exemptions for the specified home improvement and consumer credit loans as well as the broker-dealer loans.

[13] Exchange Act Section 13(k)(3) [15 U.S.C. 78m(k)(3)].

[14] 12 U.S.C. 1811 *et seq.*

[15] 12 U.S.C. 1813(c)(2).

[16] 12 U.S.C. 3104(d)(1).

[17] 12 U.S.C. 3104(d)(2).

depository institutions'' under the FDIA.[18]

Because foreign banks cannot meet the threshold criterion for the ''insured depository'' exemption under Section 402, some foreign banks [19] believe that Section 402 runs counter to the principle of ''national treatment,'' which has been a fundamental goal of federal banking legislation concerning foreign banks.[20] Federal banking law generally permits foreign financial institutions to operate in the United States without incurring either significant advantage or disadvantage compared with U.S. financial institutions.[21] Foreign banks have commented that the inability of foreign banks to qualify for the ''insured depository'' exemption places them at a disadvantage compared to their U.S. counterparts. Foreign banks have also noted that many of them are already subject in their home jurisdictions to insider lending restrictions that are similar although not identical to those imposed by Federal Reserve rules.

Some foreign banks have further commented that, under foreign banking regulations, their directors and executive officers are prohibited from borrowing money from other banks and financial institutions. In addition, although not required by local regulations, some foreign banks, like some of their U.S. counterparts, have implemented policies that prohibit senior insiders from borrowing money from other banks for the purpose of enhancing oversight and surveillance of financial transactions by insiders. The combination of these prohibitions and the provisions of Section 402 would arguably effectively foreclose a director or executive officer of a foreign bank whose securities are registered with the Commission from borrowing money. Consequently, several foreign banks have urged the Commission to adopt an exemption for foreign banks from the Exchange Act's insider lending prohibition.

When crafting this proposed foreign bank exemption, we have attempted to strike the appropriate balance among various approaches. Subjecting foreign banks to all of the Federal Reserve System's detailed requirements in this area does not seem necessary or appropriate, especially when many foreign banking regulators have well developed regulatory schemes related to insider lending. Thus, the proposed exemption is based on principles that underlie relevant U.S. banking regulations without applying certain of the specific requirements contained in those regulations. Yet we have also striven to be specific enough to ensure that the exemption is faithful to the principles of Section 402 while giving issuers adequate guidance regarding whether the exemption is available.

Overlaying all of these concerns has been our strong commitment to implement fully the spirit of the Sarbanes-Oxley Act for all companies that are subject to the Act. We believe that our proposed foreign bank rules are consistent with the legislative intent underlying Section 402. There is little legislative history to assist in discerning Congressional intent regarding Section 402. The legislative history that does exist reveals that Section 402 was introduced in an amendment to the Sarbanes-Oxley Act just prior to its passage on July 25, 2002 in order to curb corporate corruption by preventing corporations from making personal loans to their executives.[22] While there is no discussion concerning the scope of the Section 402 exemptions, there also is nothing to indicate that Congress intended to treat foreign banks differently than domestic banks. The proposed foreign bank exemption would be consistent with the Sarbanes-Oxley Act by extending Section 13(k)'s banking exemption to foreign banks but only if they meet specified criteria comparable to those required for domestic banks.

II. Discussion

A. Overview of the Proposed Foreign Bank Exemption

Proposed Rule 13k–1 would exempt from Section 13(k)(1)'s insider lending prohibition an issuer that is a foreign bank or the parent company of a foreign bank with respect to loans by the foreign bank to its insiders or the insiders of its parent company as long as:

(1) either:

(a) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits; or

(b) the Federal Reserve Board has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home jurisdiction supervisor under 12 CFR 211.24(c); and

(2) the laws or regulations of the foreign bank's home jurisdiction restrict the foreign bank from making loans to its executive officers and directors or those of its parent company unless the foreign bank extends the loan:

(a) on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank or its parent company; or

(b) pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank or its parent company and does not give preference to any of the executive officers or directors of the foreign bank or its parent company over any other employees of the foreign bank or its parent company; or

(c) following the express approval of the loan by the foreign bank's home jurisdiction supervisor; and

(3) for any loan that, when aggregated with the amount of all other outstanding loans to a particular executive officer or director, exceeds $500,000:

(a) a majority of the foreign bank's board of directors has approved the loan in advance; and

(b) the loan's intended recipient has abstained from participating in the vote regarding the loan.

B. Definition of Foreign Bank

The proposed rule would employ a definition of ''foreign bank'' that is similar to the definition under Regulation K of the Board of Governors of the Federal Reserve System (''Federal Reserve Board'').[23] Under this

[18] Most foreign banks with U.S. operations are engaged in wholesale banking activities in the United States, not in the retail deposit business. *See* U.S. General Accounting Office, ''Foreign Banks—Assessing Their Role in the U.S. Banking System,'' pp. 3, 5 (February 1996) (''*GAO Foreign Banks Report*''). These U.S. operations of foreign banks have been extensive. For example, in calendar year 2002, there were $1.34 trillion in assets dedicated to the U.S. operations of foreign banks. During this year, only 68 (12.4%) of the 547 U.S.-based entities owned or operated by foreign banks were FDIC-insured. *See* the Federal Reserve Bank's ''Report Regarding Structure Data for U.S. Offices of Foreign Banks as of December 31, 2002,'' which is available on the Federal Reserve Bank's Web site at *http://www.federalreserve.gov/releases/iba*. Of the 46 foreign banks that are currently Exchange Act reporting companies and, thus, subject to the Sarbanes-Oxley Act, only 10 have U.S.-based operations that are FDIC-insured.

[19] The Commission has received several letters from foreign banks and their counsel discussing specific proposals relating to, and urging us to adopt, an insider lending exemption for foreign banks. We will make these letters publicly available along with comment letters that we will receive in response to this rule proposal.

[20] *See, for example,* the *GAO Foreign Banks Report* at 2.

[21] *GAO Foreign Banks Report* at 16.

[22] *See* Senator Charles Schumer's remarks in 148 Cong. Rec. S. 7350 at 7360–7361. *See also* Senator Carl Levin's letter to Chairman Harvey Pitt reprinted in 149 Cong. Rec. S 2178 at 2179–2180.

[23] Codified at 12 CFR 211.1 *et seq.*, Regulation K comprises the Federal Reserve Board's rules pertaining to international banking operations. Regulation K's definition of foreign bank is found at 12 CFR 211.2(j).

definition, a foreign bank is an institution that is:

(1) incorporated or organized under the laws of a country other than the United States or a political subdivision of a country other than the United States;[24]

(2) regulated as a bank by that country's or subdivision's government; and

(3) engaged substantially in the business of banking.[25]

This definition would also include a provision explaining that, in order to be an institution engaged substantially in the business of banking, a foreign entity must receive deposits to a substantial extent in the regular course of its business, have the power to accept demand deposits, and extend commercial or other types of credit.[26] Thus, this definition would exclude from the exemption foreign companies that are in the business of extending credit but, because they do not accept deposits in the home country, are subject to a less stringent regulatory regime there.

Comment Solicited

We solicit comment on the proposed definition of foreign bank as well as on all other aspects of the proposed rule. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members of the investing public, representatives of the foreign and domestic banking community, other foreign private issuers and domestic issuers. We are further interested in learning from all parties what aspects of the rule proposal they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

Regarding the proposed definition of foreign bank, should we exclude from the definition financial institutions that extend credit but do not customarily accept deposits in their home jurisdictions, as proposed? Are there other types or characteristics of foreign financial or lending institutions that should be included or excluded from the definition of foreign bank and, if so, why? Is it appropriate to look to Regulation K under the Federal Reserve Act for the proposed definition of foreign bank? Is there another regulation or law that would be more appropriate and, if so, why?

C. The Home Jurisdiction Deposit Insurance or CCS Condition

Proposed Rule 13k–1(b)(1) would establish two alternative conditions. Under the first condition, a foreign bank would be eligible for the exemption if it were subject to a deposit insurance regime in its home jurisidiction. This condition would be consistent with the Sarbanes-Oxley Act by making it more likely that a qualifying foreign bank is subject in its home jurisdiction to a banking regulatory regime that generally addresses the risks that Section 402 was intended to guard against. Moreover, since domestic banks are currently subject to a deposit insurance requirement, adoption of a similar requirement for foreign banks would assist in ensuring that foreign banks are not viewed as advantaged over domestic banks when determining eligibility for the Section 13(k) exemption.

While there appears to be some difference of opinion among foreign banking regulators and economists as to the role of an insurance scheme in ensuring an effective and sound banking regulatory regime,[27] numerous countries have nevertheless adopted some form of a deposit insurance scheme, including approximately 34 European countries, 10 African countries, 8 Asian countries, 4 Middle Eastern countries, and 16 countries from North or South America.[28] Therefore, our proposed home country deposit insurance requirement for foreign banks, if adopted, would likely be satisfied by most foreign banks.

Moreover, we have phrased the deposit insurance requirement in general terms in recognition that there are differences among deposit insurance schemes in the foreign banks' home countries. In the interest of comity, we believe that deference to the foreign banking supervisor regarding the details of its deposit insurance scheme is appropriate.

Proposed Rule 13k–1(b)(1)'s alternative condition would render a foreign bank eligible for the exemption if the Federal Reserve Board has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis (''CCS'') by its home jurisdiction supervisor. CCS refers to a Federal banking regulatory requirement that provides that, before a foreign bank can establish a U.S. branch or agency or acquire a U.S. bank or commercial lending company, the Federal Reserve Board must determine that the foreign bank is subject to CCS in its home jurisdiction.[29] In order to make this determination, among other considerations, the Board must find that the supervisor in the bank's home jurisdiction receives information on the bank's worldwide operations sufficient to assess the bank's overall financial condition and compliance with laws and regulations.[30]

We recommend establishing a favorable CCS determination as an alternative condition to a deposit insurance requirement primarily in order to accommodate foreign banks located in jurisdictions that lack a deposit insurance scheme yet have received a favorable CCS determination. This alternative would be consistent with Section 402 by rendering eligible for the bank exemption those foreign banks permitted to do business in the United States because the Board has found their home country banking laws and supervision to be sufficiently comprehensive.

By requiring either a home country deposit insurance scheme or a favorable CCS determination, we would ensure that the insider lending exemption would apply only to qualified foreign banks and not to other foreign entities, such as insurance companies or pension funds, that may also be subject to oversight in their home countries. Moreover, by positing a home

[24] Under the Exchange Act, the term ''United States'' includes the District of Columbia, Puerto Rico, the Virgin Islands, and any other possession of the United States. *See* the definition of ''State'' in Exchange Act Section 3(a)(16) [15 U.S.C. 78c(a)(16)]. The proposed rule would assume this statutory definition.

[25] *See* proposed 17 CFR 240.13k–1(a).

[26] *See* proposed 17 CFR 240.13k–1(a)(3).

[27] *See for example,* U.S. GAO, ''Deposit Insurance: Overview of Six Foreign Systems'' (February 1991); and James R. Barth, ''Bank Regulation and Supervision: What Works Best?'', 11, n. 5 (January 2002), a Basel Committee Working Paper available at *http://www.bis.org/bcbs/events/b2ealev.pdf.*

[28] *See* Federal Deposit Insurance Corporation, ''International Directory of Deposit Insurers'' (2000), which is available at *http://www2.fdic.gov/iddi/intguide00.pdf;* and Working Paper 99/54 for the International Monetary Fund, ''Deposit Insurance: A Survey of Actual and Best Practices,'' 30–34 (April 1999) (''IMF Working Paper'').

[29] *See* 12 U.S.C. 3105(d)(2)(A) and 12 CFR 211.24(c).

[30] When making this CCS determination, the Board must assess a number of factors, including the extent to which the home country supervisor:

(1) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(2) obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(3) obtains information on the dealings and relationships between the foreign bank and its affiliate companies;

(4) receives from the foreign bank consolidated financial reports on a worldwide basis or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis; and

(5) evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

12 CFR 211.24(c)(1)(ii).

jurisdiction deposit insurance requirement as an alternative to a favorable CCS determination, we would enable foreign banks that have U.S. offices approved by the Federal Reserve Board under a standard other than CCS to qualify for the exemption.[31] In addition, if we required only a favorable CCS determination, the proposed rule would deny the exemption to a foreign bank that has never applied to the Board for approval of a U.S. office even if the foreign bank's home country has promulgated insider lending restrictions similar to those under U.S. law and the bank otherwise meets our proposed requirements.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(1). Should we rely alternatively on a home jurisdiction deposit insurance requirement or a favorable CCS determination, as proposed? Should we use only a favorable CCS determination as the sole criterion? If so, would we be excluding banks from countries that appear to have a developed bank regulatory regime but have nevertheless not received a favorable CCS determination? Conversely, should we rely exclusively on a home jurisdiction deposit insurance requirement? If so, should we require that the home jurisdiction deposit insurance requirement meet certain specified criteria? Or are we correct in deferring to the home jurisdiction bank supervisor and positing only a general home jurisidiction deposit insurance requirement, as proposed? Are there other criteria that should be used, either as alternatives to those that have been proposed or as the sole criteria?

We have based the proposed CCS determination alternative on the Federal Reserve Board's practice of determining whether, upon application to the Board, a specific bank is subject to CCS in its home jurisdiction. However, for the purpose of the proposed foreign bank exemption under Section 402, because most banks within a particular jurisidiction are likely to be similarly regulated, it may be appropriate to require that at least one bank in the foreign bank's home jurisidiction has been the subject of a favorable CCS determination. We solicit comment on whether the proposed exemption should be available to a foreign bank that has specifically received a favorable CCS determination, as proposed. Should we instead permit a foreign bank to qualify for the proposed exemption if its home jurisidiction is also the home jurisdiction of at least one bank that has received a favorable CCS determination?

D. The Home Jurisdiction Insider Lending Restriction Condition

In addition to having to fulfill one of the two conditions set forth in proposed Rule 13k–1(b)(1), a foreign bank would also have to meet one of three alternate conditions in proposed Rule 13k–1(b)(2) in order to be eligible for the foreign bank exemption. The first two conditions are based on primary requirements of the Federal Reserve Act's insider lending restrictions.[32] These conditions would require a foreign bank's loan to an executive officer or director to be either on market terms to unrelated parties or, if pursuant to an employee benefit or compensation plan, on terms no more beneficial to those offered to its other employees. Moreover, because Section 13(k) prohibits an issuer from making or arranging for an insider loan through a subsidiary,[33] proposed Rule 13k–1(b)(2) would permit a foreign bank to make a loan to the executive officers or directors of its parent company[34] only when the loan is on market terms to unrelated parties or, if pursuant to the parent company's employee benefit or compensation plan, on terms no more favorable to those offered to the parent company's other employees. Alternatively, a foreign bank insider loan could also qualify for the Section 13(k) exemption if it has received the prior approval of the foreign bank's home jurisdiction supervisor.

This second provision of proposed Rule 13k–1(b) would be consistent with Section 402 by conditioning the exemption on a foreign bank's adherence to one of the main insider lending restrictions of Regulation O. Since many jurisdictions have adopted insider lending restrictions similar to those of Regulation O,[35] we do not believe that this proposed provision should pose an undue burden for many foreign banks.

The proposed exemption would recognize that differences exist between and among Regulation O and bank insider lending regulatory regimes in foreign jurisdictions. For example, as proposed Rule 13k–1(b)(2)'s last alternative condition reflects, some jurisdictions hinge the legality of a bank insider loan on its pre-approval by the home jurisdiction bank supervisor. Again in the interest of comity, we believe that some measure of deference to the home jurisdiction bank supervisor regarding the content of its insider lending restrictions is appropriate.

We are aware that some foreign banks believe that a favorable CCS determination for its home jurisdiction should suffice to qualify a foreign bank for the exemption from insider lending.[36] We have not based our proposed rule on this approach because whether a foreign bank is subject to insider lending restrictions in its home country is not a specific statutory or regulatory criterion that the Federal Reserve Board must consider when making its CCS determination. Consequently, in many instances, a favorable CCS determination does not reveal whether a foreign bank's home country has insider lending restrictions similar to those under Federal Reserve

[31] The Federal Reserve Board has approved several applications from foreign banks for U.S. branch or agency offices under a standard that does not require a CCS determination but only a finding that the home country supervisor is ''actively working to establish arrangements for the consolidated supervision'' of the bank and all other factors are consistent with approval. *See* 12 CFR 211.24(c)(1)(iii). A less rigorous standard also exists for the Board's approval of a foreign bank's application for a U.S. ''representative'' office. *See* 12 CFR 211.24(d)(2). The home country of a foreign bank that has received Board approval under either of these other standards may have adopted insider lending restrictions although its banking regulations may not yet fully meet CCS criteria. This foreign bank would not be eligible for the exemption from Exchange Act Section 13(k)'s insider lending prohibition if we were to adopt a rule that made a favorable CCS determination the sole criterion for the exemption.

[32] The Federal Reserve Act's insider lending restrictions are set forth in Regulation O (12 CFR 215.1 *et seq.*) as well as in the Act itself at 12 U.S.C. 375a and 375b.

[33] Exchange Act Section 13(k)(1).

[34] Proposed Rule 13k–1(a)(4) would define the ''parent company'' of a foreign bank as a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or equity of the foreign bank.

[35] The Basel Committee on Bank Supervision of the Bank for International Settlements (''Basel Committee'') has developed its ''Core Principles for Effective Banking Supervision'' (''*Core Principles*'') and its ''*Core Principles Methodology*'' in order to provide the international financial community with a benchmark against which the effectiveness of bank supervisory regimes can be assessed.'' *See* Basel Committee, *Core Principles Methodology,* 3 (1999). Principle 10 of the *Core Principles Methodology* provides that ''banking supervisors must have in place requirements that banks lend to related companies and individuals on an arms-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.'' *Core Principles Methodology* at 25. According to the Basel Committee, ''the vast majority of countries have endorsed the Core Principles and have declared their intention to implement them.'' *Core Principles* at 1.

[36] For example, the Institute of International Bankers has requested that we adopt a rule that would exempt a foreign bank under Section 402 if it derives from a country that the Federal Reserve Board has determined provides CCS over its banking institutions *or* if it is subject in its home jurisdiction to insider lending regulations modeled on the core principles of Regulation O. We will make a copy of this letter publicly available.

regulations if at all.[37] In addition, because Section 402 conditions the bank exemption on compliance with Regulation O, it is consistent to condition the foreign bank exemption on requirements comparable to those under Regulation O.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(2). Should we require a foreign bank to be subject to at least one of the three prescribed insider lending restrictions in its home jurisdiction in addition to being from a jurisdiction that has enacted a deposit insurance requirement or has received a favorable CCS determination, as proposed? Should being subject to one of the three prescribed insider lending restrictions in its home jurisdiction be the sole criterion for determining whether a foreign bank is eligible for the insider lending exemption? Or should being from a jurisdiction that has received a favorable CCS determination suffice to qualify a foreign bank for the exemption?

If we should require a foreign bank to be subject to insider lending restrictions in its home jurisdiction, should we limit the alternatives to those set forth in the first two prongs of proposed Rule 13k–1(b)(2)? Should we require a foreign bank to be subject to insider lending restrictions that are substantially similar to other insider lending provisions of Regulation O in addition to the two proposed restrictions? Should we permit a foreign bank to make insider loans that comply with Regulation O requirements even if the foreign bank's home jurisdiction has not yet enacted these requirements as laws or rules?

Should we condition the Section 13(k) exemption for a foreign bank's loans to the executive officers or directors of its parent company, as proposed? If so, should we define a foreign bank's ''parent company'' as a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or equity of the foreign bank, as proposed? Should the percentage of ownership be higher or lower and, if so, why? For example, should we base our definition on the definition of ''subsidiary'' under the Bank Holding Company Act,[38] which is referenced in Regulation O,[39] and which in part defines the subsidiary of a bank holding company as any company 25 percent or more of whose voting shares are directly or indirectly owned or controlled by such bank holding company? Are there other indices of ownership or control that the definition of a foreign bank's ''parent company'' should include?

Should we permit a foreign bank to qualify for the exemption if its insider loans are subject to prior approval by the bank supervisor in its home jurisdiction, as proposed? Should we subject a foreign bank only generally to insider lending restrictions in its home jurisdiction without specifying the content of the restrictions? Are there other criteria that should be used, either as alternatives to those that have been proposed or as sole criteria? For example, should we exempt from the proposed insider lending conditions insider loans of a foreign bank that are of a *de minimis* amount and that are exempt from insider lending restrictions in its home jurisdiction? Would this type of exemption be consistent with insider lending restrictions applicable to U.S. banks?

E. The Prior Board of Directors Approval Condition

Proposed Rule 13k–1(b)(3) would require prior approval by a majority of the foreign bank's board of directors of any insider loan in an amount that, when aggregated with all other outstanding loans to a particular executive officer or director, exceeds $500,000. The proposed rule would also require the intended loan recipient to abstain from the vote on the loan. Domestic banks are subject to a similar requirement under federal banking law.[40]

We understand that some foreign banks may have a two-tier board system, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. We propose that, for these banks, majority approval of the insider loan by either board will suffice to satisfy the prior board approval requirement of proposed Rule 13k–1(b)(3) as long as the individual receiving the loan has abstained from participating in the board's voting.

We have not included some of the other detailed conditions required by Regulation O in the proposed foreign bank exemption. For example, Regulation O sets limits on the aggregate amount of credit that a subject bank may extend to any one insider as well as to all insiders. These limits are measured as a percentage of the bank's unimpaired capital and unimpaired surplus.[41] The primary purpose of these limitations appears to be to ensure the safety and structural soundness of the U.S. banking system rather than to address the investor protection and corporate governance concerns underlying the federal securities laws. Accordingly, and because foreign jurisdictions can legitimately reach different conclusions regarding the necessary features of a safe and sound banking system, we have not included similar limitations in our proposed rule.

Comment Solicited

We solicit comment on proposed Rule 13k–1(b)(3). Should we require prior board approval for an insider loan that, when aggregated with all other loans to that insider, exceeds a certain amount? If so, should the amount be $500,000, as proposed? Should it be an amount less than or greater than $500,000 and, if so, why? Should we require that more than a majority of the board approve such a loan? For example, should we require a two-thirds vote or a unanimous vote of approval by the board?

For a foreign bank that has a two-tier board, should majority approval of the insider loan by either board suffice to satisfy the prior board approval requirement, as proposed? Should we instead require majority approval by the non-management, supervisory board?

Should proposed Rule 13k–1(b)(3) require the prior approval either of a foreign bank's board or its home jurisdiction bank supervisor? Are there other types of insider loans that should be the subject of a prior board or bank regulator approval requirement? For example, should we impose limitations on the amount that a foreign bank's directors and executive officers can borrow either on an individual basis or in the aggregate under proposed Rule 13k–1? Should we impose conditions based on specified net capital ratios?

F. Disclosure Considerations

Currently, domestic and foreign banks are subject to substantially similar disclosure requirements regarding insider loans under the federal securities laws. As long as a bank does not disclose the loans as nonaccrual, past due, restructured or potential

[37] While some of the Board's CCS determinations mention the presence of home country insider lending restrictions as one factor to be considered among others, others fail to discuss this factor at all.

[38] 12 U.S.C. 1841(d).

[39] *See* 12 C.F.R. 215.2(a) and (o).

[40] *See, for example*, 12 CFR 215.4(b) of Regulation O, which imposes similar board approval and insider abstention conditions for insider loans by member banks that exceed in the aggregate per insider the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus. This provision further provides that in no event may a member bank extend credit to an insider that in the aggregate exceeds $500,000 per insider without complying with the board approval and insider abstention requirements.

[41] *See* 12 CFR 215.4(c) and (d) of Regulation O.

problems under Industry Guide 3[42] (''problematic loans''), its disclosure may consist of a statement, if true, that the loans in question:

(A) Were made in the ordinary course of business;

(B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) did not involve more than the normal risk of collectibility or present other unfavorable features.[43]

This minimal disclosure requirement for ordinary, non-problematic insider bank loans is consistent with the exemption that domestic banks currently have under Exchange Act Section 13(k) and with the similar exemptive treatment that we propose for foreign banks. Accordingly, we do not recommend changing this requirement at this time.

For an insider loan failing to meet any of the above conditions, both a foreign and domestic bank must disclose the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.[44] However, unlike the comparable instructions for domestic issuers, the Form 20–F instructions do not explicitly require a foreign issuer to identify the insider that has received a problematic loan and the insider's relationship to the issuer. Accordingly, we propose to revise the Form 20–F instructions to require a foreign bank to disclose the identity of any director, executive officer or other related party otherwise required to be disclosed by the Form who has received a loan to which the non-problematic loan instruction does not apply, and to describe the nature of the relationship of the loan recipient with the foreign bank. As a result, the same disclosure standards regarding problematic loans to insiders would apply to both domestic banks and foreign banks other than the few Canadian banks that are subject to the Multijurisdictional Disclosure System (''MJDS'').

The proposed rules would not affect the disclosure requirements for Form 40–F, the MJDS form used by qualified Canadian issuers to file their Exchange Act annual reports and registration statements.[45] We are not proposing to amend Form 40–F since its content, like the content of all of the other MJDS forms, is determined primarily by the applicable Canadian securities administrator.

Comment Solicited

We solicit comment on the adequacy of the disclosure requirements for insider loans by domestic and foreign banks. Should we require more detailed disclosure regarding non-problematic bank loans to insiders as a condition of eligibility for the Section 13(k) bank exemption for domestic and foreign banks? For example, should we require domestic and foreign banks to disclose the aggregate amount and average interest rate of their non-problematic loans to each insider? If not, should we at least require foreign banks to disclose the identity of an insider that has received a problematic loan and the insider's relationship to the foreign issuer, as proposed? Should we require Canadian banks that file on Form 40–F to provide this information about problematic loans to insiders as well?

G. Proposed Effective Date

We propose that the effective date for proposed Rule 13k–1, if adopted, will be the date of its publication in the **Federal Register**. Because of the exemptive nature of the proposed rule, we do not believe that a transition period is necessary to enable foreign issuers and other interested parties to prepare for the new rule. We further propose that the proposed Form 20–F amendment, if adopted, will be 30 days from the date of its publication in the **Federal Register**. Because of the expected minimal revised disclosure resulting from the proposed Form 20–F amendment, we believe that a one month transition period is ample time to enable foreign issuers and others to prepare for the revised form.

Comment Solicited

Are there practical difficulties if the proposed Rule 13k–1 does not become effective on the date that the adopted rule is published in the **Federal Register**? Similarly, are there practical difficulties if the proposed Form 20–F amendment become effective on a date that is later than 30 days after its publication in the **Federal Register**? If you disagree with the proposed effective dates, when should the proposed rule and form amendment become effective, and why?

III. Paperwork Reduction Act Analysis

This rule proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[46] We are submitting our proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[47] The title of the affected collection of information is Form 20–F (OMB Control No. 3235–0288). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F unless it displays a currently valid OMB control number. The disclosure will be mandatory.

Form 20–F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to ensure that investors are informed about foreign private issuers that have registered securities with the Commission. The hours and costs associated with preparing, filing and sending Form 20–F constitute reporting and cost burdens imposed by this collection of information. We have based our estimate of the effect that the proposed Form 20–F amendment would have on this collection of information primarily on our review of the most recently completed PRA submission for Form 20–F, on the form's requirements, and on actual filings of Form 20–F.

We estimate that currently foreign private issuers file 1,194 Form 20–Fs each year. We also estimate that foreign private issuers incur 25% of the burden required to produce the Form 20–Fs resulting in 769,825 annual burden hours incurred by foreign private issuers out of a total of 3,079,300 annual burden hours. Thus, we estimate that 2579 total burden hours per response are currently required to prepare the Form 20–F. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 20–Fs at an average cost of $300 per hour for a total annual cost of $690,500,680.

We estimate that currently 41 foreign banks file annual reports on Form 20–F.[48] We further estimate that

[42] Industry Guide 3 provides statistical disclosure requirements for bank holding companies.

[43] Instruction 2 to Form 20–F Item 7.B (for foreign banks) and Instruction 3 to Regulation S–K Item 404(c) (for domestic banks).

[44] Form 20–F Item 7.B.2 and Regulation S–K Item 404(c).

[45] 17 CFR 249.240f.

[46] 44 U.S.C. 3501 *et seq.*

[47] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[48] Only 41 of the 46 foreign bank reporting companies filed their most recent annual report on

Continued

approximately 10% of reporting foreign banks have problematic insider loans that must be disclosed under Item 7.B. of Form
20–F. We expect that, if adopted, the proposed amendment would cause 4 foreign private issuers to incur additional burden hours and costs related to providing expanded disclosure concerning problematic loans to insiders. We estimate that for each of the Form 20–Fs affected, there would occur one additional burden hour pertaining to these expanded disclosure requirements for a total of 4 additional burden hours. We expect that foreign private issuers would incur 25% of these additional burden hours (1 hour). We further expect that outside firms would incur 75% of the additional burden hours (3 hours) at an average cost of $300 per hour for a total of $900 in additional annual costs.

Thus, we estimate that the proposed amendment would increase the annual burden incurred by foreign private issuers in the preparation of Form 20–F to 769,826 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form 20–F preparation to 3,079,304 burden hours, but would leave the average number of burden hours per response unaffected at 2579 hours. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $690,501,580.

Comment Solicited

We solicit comment on the expected effects of the proposed Form 20–F amendment under the PRA. In particular, we solicit comment on the accuracy of our additional burden hour and cost estimates expected to result from the proposed amendment. We further solicit comment in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendment will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–15–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–15–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

For several years, U.S. investors have sought to diversify their holdings by investing in the securities of foreign issuers, including foreign banks. At the same time, foreign issuers, including foreign banks, have sought opportunities to raise capital and effect other securities-related transactions in the United States. Proposed Rule 13k–1 would benefit both U.S. investors and foreign bank issuers by removing a regulatory impediment that, if left unchecked, could discourage foreign banks from entering or remaining in U.S. capital markets.

U.S. investors would benefit from proposed Rule 13k–1 to the extent that the proposed rule encourages a foreign bank to maintain or achieve its Exchange Act reporting status. A foreign bank would benefit from proposed Rule 13k–1 by being able, like its domestic counterpart, to provide qualified personal loans to its executive officers and directors while an Exchange Act reporting company.

More particularly, if a foreign bank's home jurisdiction has enacted insider lending restrictions similar to those under Regulation O, the foreign bank would benefit from proposed Rule 13k–1 by not having to fulfill two sets of insider lending rules. If a foreign bank's home jurisdiction has enacted insider lending rules that are less restrictive than those imposed under Regulation O but that nevertheless qualify under proposed Rule 13k–1(b)(2) because they require the prior approval of the home jurisdiction bank supervisor for specified insider loans, the foreign bank would benefit to the extent that the cost savings resulting from being subject to the less restrictive home jurisdiction insider lending rules exceed the cost of obtaining the approval of its home jurisdiction bank supervisor for the specified insider loan.

We expect that some foreign bank issuers will incur additional costs attempting to meet proposed Rule 13k–1(b)(3)'s condition requiring the prior approval by a majority of a foreign bank's board of directors of a loan to an executive officer or director that, in the aggregate, would exceed $500,000 for that particular insider. We also expect that some foreign issuers will incur additional costs from our proposed amendment of Form 20–F that would require a foreign issuer to disclose the identity of a director, executive officer or other related party who has received a problematic loan and to describe the nature of the loan recipient's relationship to the lending issuer. However, because currently only 10% of the 41 foreign depository institutions that file Form 20–F annual reports disclose problematic loans with insiders, and because of the brevity of disclosure required to meet the proposed requirement, we do not expect the resulting costs to be unduly burdensome. In any event, we believe that any ensuing costs would be justified by the benefits of foreign banks being able to make loans to their directors and executive officers on conditions comparable to those afforded to domestic banks subject to Regulation O.

Comment Solicited

We solicit comment on the costs and benefits for foreign and domestic issuers of proposed Rule 13k–1 and the proposed amendment of Form 20–F. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the proposed rule and form amendment for foreign and domestic issuers. We also request

Form 20–F. Each of the other five filed their annual report on Form 40–F, the MJDS form for qualified Canadian issuers. As previously discussed, we are not proposing to amend Form 40–F. Accordingly, the estimated burden hour and cost estimates for Form 40–F under the PRA remain unaffected by this proposed rulemaking.

data to quantify the costs and value of the benefits identified.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[49] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[50] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[51] requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

We expect that proposed Rule 13k–1 will have a beneficial effect on competition in U.S. capital markets by eliminating or significantly reducing the burden imposed by Sarbanes-Oxley Section 402's insider lending prohibition on most foreign bank issuers. In so doing, proposed Rule 13k–1 should encourage foreign banks to continue or achieve their status as Exchange Act reporting companies. Such encouragement could facilitate increased competition among U.S. capital market participants for the securities of foreign and domestic bank reporting companies to the ultimate benefit of investors.

We request comment on whether proposed Rule 13k–1 and the proposed amendment to Form 20–F, if adopted, would impose a burden on competition or promote efficiency, competition, and capital formation as discussed above or in any other way. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed Rule 13k–1 under the Securities Exchange Act of 1934 (''Exchange Act'') and the proposed amendment to Form 20–F under the Exchange Act, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

Proposed Rule 13k–1 would exempt from the insider lending prohibition of Exchange Act Section 13(k) a foreign bank that meets specified criteria similar to the criteria that a domestic bank must meet in order to qualify for the exemption from the insider lending prohibition under Exchange Act Section 13(k)(3). This proposed rule would, thus, directly affect only foreign issuers and not domestic companies since Exchange Act Section 13(k) already exempts qualified domestic banks from the insider lending prohibition. Similarly, the proposed amendment to Form 20–F would only affect foreign issuers since only foreign issuers are permitted to use this form.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the proposed rule and form amendment will fall outside the scope of the Act. For this reason, proposed Exchange Act Rule 13k–1 and the proposed amendment to Form 20–F should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis of Proposed Amendment

We are proposing Exchange Act Rule 13k–1 and the proposed amendment to Form 20–F under the authority in Sections 6, 7, 10 and 19 of the Securities Act, Sections 3(b), 12, 13, 23 and 36 of the Exchange Act, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of the Proposed Amendment

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Add § 240.13k–1 to read as follows:

§ 240.13k–1 Foreign bank exemption from the insider lending prohibition under section 13(k).

(a) For the purpose of this section:

(1) *Foreign bank* means an institution:

(i) The home jurisdiction of which is other than the United States;

(ii) That is regulated as a bank in its home jurisdiction; and

(iii) That is engaged substantially in the business of banking.

(2) *Home jurisdiction* means the country, political subdivision or other place in which a foreign bank is incorporated or organized.

(3) *Engaged substantially in the business of banking* means engaged in:

(i) Receiving deposits to a substantial extent in the regular course of business;

(ii) Having the power to accept demand deposits; and

(iii) Extending commercial or other types of credit.

(4) *Parent company of a foreign bank* means a corporation or other organization that directly or indirectly owns more than 50 percent of the voting securities or the equity of the foreign bank.

(b) An issuer that is a foreign bank or the parent company of a foreign bank is exempt from the prohibition of

[49] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[50] 15 U.S.C. 78w(a)(2).

[51] 15 U.S.C. 78c(f).

extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in the foreign bank's home jurisdiction under 12 CFR 211.24(c); and

(2) The laws or regulations of the foreign bank's home jurisdiction restrict the foreign bank from making loans to its executive officers and directors or those of its parent company unless the foreign bank is permitted to and does extend the loan:

(i) On substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank or its parent company; or

(ii) Pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank or its parent company and does not give preference to any of the executive officers or directors of the foreign bank or its parent company over any other employees of the foreign bank or its parent company; or

(iii) Following the express approval of the loan by the bank supervisor in the foreign bank's home jurisdiction; and

(3) For any loan that, when aggregated with the amount of all other outstanding loans to a particular executive officer or director, exceeds $500,000:

(i) A majority of the foreign bank's board of directors has approved the loan in advance; and

(ii) The loan's intended recipient has abstained from participating in the vote regarding the loan.

3. Amend Form 20–F (referenced in § 249.220f) by revising paragraph 2 of Item 7.B of Part 1 to read as follows:

Note: The text of Form 20–F does not, and the amendment will not, appear in the Code of Federal Regulations.

OMB APPROVAL:

OMB Number: 3235–0288.

Expires: March 31, 2006.

Estimated average burden hours per response 2,579.

United States Securities and Exchange Commission, Washington, DC 20549

FORM 20–F

* * * * *

PART 1

* * * * *

Item 7. Major Shareholders and Related Party Transactions

* * * * *

B. Related party transactions.

* * * * *

2. The amount of outstanding loans (including guarantees of any kind) made by the company or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan. In addition, if the company, its parent or any of its subsidiaries is a foreign bank (as defined in 17 CFR 240.13k–1) that has made a loan to which Instruction 2 of this Item does not apply, identify the director, executive officer or other related party required to be described by this Item who received the loan, and describe the nature of the loan recipient's relationship to the foreign bank.

* * * * *

Dated: September 11, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–23655 Filed 9–16–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
September 17, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 972

Required and Voluntary Conversion of Developments From Public Housing Stock; Final Rules and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR–4475–F–02]

RIN 2577–AC01

Required Conversion of Developments From Public Housing Stock

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements section 537 of the Quality Housing and Work Responsibility Act of 1998. Section 537 requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory and convert it to tenant-based assistance. Since the cost methodology necessary to conduct the cost comparisons for required conversions has not yet been finalized, PHAs are not required to undertake conversions under this final rule until the effective date of the cost methodology. HUD is publishing a proposed rule elsewhere in today's **Federal Register** to provide the public with an opportunity to comment on the methodology that HUD proposes be used for the required cost comparisons. This final rule follows publication of a July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The July 23, 1999, Proposed Rule

On July 23, 1999 (64 FR 40232), HUD published for public comment a proposed rule implementing section 537 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Pub. L. 105–276, approved October 21, 1998) (QHWRA). Section 537 of QHWRA added a new section 33 to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). Section 33 requires Public Housing Agencies (PHAs) to annually review their public housing inventory and identify distressed developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory and convert it to tenant-based assistance. In the July 23, 1999, proposed rule HUD proposed to implement the provisions for required conversions through the creation of a new 24 CFR part 972, subpart A.

B. Relationship to Required Conversion Under Section 202 of the FY 1996 HUD Appropriations Act

Section 537 of QHWRA also repealed section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 1437l **note**). Section 202 provided for a program of required conversion of distressed public housing. HUD implemented section 202 by issuing the regulations located at 24 CFR part 971. Although section 202 has been repealed, developments that were identified by PHAs or by HUD—before the enactment of QHWRA—for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section until such requirements are satisfied. Thereafter, the provisions of this final rule apply to any remaining public housing on the sites of those developments.

C. Relationship to Voluntary Conversion

In addition to revising the statutory provisions for required conversions, QHWRA created a program of voluntary conversions. Section 533 of QHWRA revised section 22 of the 1937 Act, entitled ''Authority to Convert Public Housing to Vouchers.'' A separate proposed rule was published on July 23, 1999 (64 FR 40240), to implement these provisions through a new 24 CFR part 972, subpart B. The final rule that will make these amendments effective is published elsewhere in today's **Federal Register**.

II. This Final Rule

This final rule establishes regulatory policies and procedures for the program of required conversions authorized under section 33 of the 1937 Act. The final rule follows publication of the July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule. The major changes made by this final rule to the July 23, 1999, proposed rule are summarized below.

A. General Changes

1. *Reorganization and clarification of required conversion requirements.* For purposes of clarity, this final rule reorganizes and consolidates several of the regulatory provisions contained in the proposed rule. For example, the final rule now groups all regulatory provisions concerning similar subject matter (such as the required conversion process and conversion plans) under headings that identify the subject of the related requirements. In addition, the final rule replaces the question and answer format used in the proposed rule with standard section headings that identify the subject of the regulatory provisions. Further, a new section (§ 972.106) has been added, which summarizes the required conversion process.

2. *Applicability of the Uniform Relocation Act.* The final rule adds a new § 972.118, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

B. Changes Regarding Identification of Developments Subject to Required Conversion

1. *Revised vacancy rate for purposes of determining distress.* HUD has revised the rule to provide that, for the first five years following the effective date of this final rule, a 15 percent vacancy rate will be used for purposes of determining whether a development is subject to required conversion. A 12

percent vacancy rate will be used after the expiration of this five-year period. The use of the 15 percent vacancy rate will allow PHAs and HUD to focus their conversion efforts on the most distressed public housing during the initial implementation of the final rule.

2. *Prevention of intentional vacancies.* The final rule adds a new provision that prevents the intentional creation of vacancies by PHAs for purposes of triggering a required conversion. Specifically, the final rule provides that vacant units will not be considered in the determination of distress if HUD, in its sole discretion, determines that the vacancies were created intentionally and do not indicate continued distress.

3. *Standards for distressed properties.* The final rule provides that a property that meets the standards for a distressed development will not be considered to be distressed if HUD determines that the reasons the property meets such standards are temporary in duration and are unlikely to recur.

4. *Income-mix standard.* HUD has revised the income-mix component of the long-term viability test to more closely track the statutory language of section 33. Specifically, the final rule provides that a development satisfies the income-mix requirements if, after reasonable investment for the specified period of time, it is probable that the development ''can achieve a broader range of family income.''

5. *Reasonableness of proposed revitalization costs for viability.* In order for a development to satisfy the long-term viability test, the proposed revitalization costs for viability must be reasonable. The proposed rule provided that the revitalization cost estimate contained in the PHA's most recent comprehensive plan for modernization should be used for this purpose. However, since HUD no longer requires comprehensive plans for modernization, this final rule provides that a PHA shall use the revitalization cost estimate contained in the PHA's most recent Annual Plan or 5-Year Plan, unless the PHA demonstrates, or HUD determines, that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs.

C. Changes Regarding Conversion Plan Requirements

1. *Relocation Plan.* The final rule provides that the relocation-related requirements of a conversion plan must be contained in a relocation plan, which must include a budget for carrying out relocation activities.

2. *Schedule for the provision of moving expenses.* The final rule clarifies that any required conversion plan must also include a schedule for providing actual and reasonable relocation expenses, as determined by the PHA, to families displaced by the conversion.

3. *URA notices of displacement.* For purposes of clarity, HUD has revised the rule to more closely conform to the notice requirements of the URA and the implementing regulations at 49 CFR part 24. As required by 49 CFR 24.203, if a required conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

The General Information Notice provides families subject to displacement with certain information regarding their rights under URA. Under the URA regulation at 49 CFR 24.203, persons subject to displacement must be provided with the General Information Notice ''as soon as feasible.'' Accordingly, this final rule requires that the PHA provide families with the General Information Notice no later than the date the conversion plan is submitted to HUD.

The Notice of Relocation Eligibility advises families subject to displacement that they are eligible for relocation assistance as of a certain date that agencies are free to define (called the ''date of initiation of negotiations'' in the URA regulations). This final rule provides that, for purposes of required conversions, the ''date of initiation of negotiations'' shall be the date that HUD approves the conversion plan.

HUD Handbook 1378.0, ''Tenant Assistance, Relocation and Real Property Acquisition'' (issued on March 28, 1996), provides additional details and helpful information regarding the basic statutory and regulatory requirements that must be followed by an agency that carries out real property acquisition or the displacement of a person for a project or program for which HUD financial assistance is provided, including the notice requirements discussed above. Interested persons may download a copy of Handbook 1378.0 through HUD's Client Information and Policy System (HUDCLIPS) Web page at *http://www.hudclips.org.*

4. *Provision of voucher assistance used for relocation.* The final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be provided to the family at least 90 days before conversion.

5. *Comparable housing in the form of tenant-based assistance.* The final rule revises the ''comparable housing'' requirements of the proposed rule to more closely track the statutory language of section 33 of the 1937 Act. Specifically, the final rule provides that families displaced as a result of conversion be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA. Further, if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon relocation of the family into such housing.

6. *Mobility counseling.* For purposes of clarity, this final rule specifies that the required PHA counseling to displaced families must include appropriate mobility counseling. The PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding.

7. *Certification of consistency with Consolidated Plan.* The final rule clarifies that if a PHA elects to satisfy the consultation requirements by certifying that its conversion plan is consistent with the Consolidated Plan, this certification may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

8. *Clarification of consultation requirements.* The final rule clarifies that the PHA must hold at least one meeting with the residents of the affected sites. The language of the proposed rule would have required one meeting between the PHA and residents, but was silent regarding the possibility of the PHA sponsoring additional meetings. This final rule also clarifies that the PHA must meet to discuss the required conversion with any duly elected resident council that covers the development in question.

9. *Incorporation of conversion plan in PHA Plan.* As provided in the July 23, 1999, proposed rule, this final rule requires that a PHA must submit any required conversion plan as part of the PHA's Annual Plan. Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, this final rule provides that this requirement will not become effective until PHA fiscal years commencing six months after the effective date of the cost methodology. A proposed cost methodology was contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies

to required conversions). HUD has decided to significantly revise the cost methodology, based both on the public comments received on the voluntary conversion proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, HUD is delaying the effective date of this rule for a period of six months (180 days) following publication (as opposed to the customary 30-day period). HUD's goal is to have a final rule establishing the cost methodology in effect by this date. Delaying the effective date of this rule for six months will permit the final rule to take effect as close as possible to the targeted effective date for the cost methodology.

While the cost methodology is being completed, PHAs may wish to prepare for required conversions by using the proposed methodology contained in the HUD proposed rule being published today. However, because the final methodology may differ from what is contained in the proposed rule, PHAs should not assume that the proposed cost test will be final with respect to possible required or voluntary conversions. HUD will revise the PHA Plan instructions to accommodate submission of any required conversion plan.

D. Change Regarding HUD Actions With Respect to Required Conversions

1. *Clarification of HUD Actions with Respect to Required Conversions.* The final rule clarifies the actions HUD will take if a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion. Specifically, the final rule provides that HUD will disqualify the PHA from HUD funding competitions and direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet, the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety. HUD may also take any or all of the following actions: (1) Identify developments that fall within the statutory criteria where the PHA has failed to do so properly; (2) take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan; (3) require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section; (4) authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency; and (5) any other action that HUD determines appropriate and has the authority to undertake.

2. *HUD review of conversion plans.* The final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

III. Discussion of Public Comments Received on the July 23, 1999, Proposed Rule

The public comment period closed on September 21, 1999. By close of business on this date, HUD had received five public comments. Comments were submitted by a PHA; two of the three main organizations representing PHAs; and two legal aid organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the July 23, 1999, proposed rule and HUD's responses to these comments.

A. Comments Regarding Standards for Identifying Public Housing Developments Subject to Required Conversion (§ 972.04 of the Proposed Rule; § 972.124 of This Final Rule)

The proposed rule at § 972.104 described the standards for identifying public housing developments subject to required conversion.

1. Comments Regarding the Required Vacancy Rate

Comment: Proposed definition of ''distressed housing'' failed to consider factors that may be relevant to conversion. Three commenters wrote that the proposed vacancy rate was overly inclusive and did not comport with the guidelines established by the Commission on Severely Distressed Public Housing (hereafter ''the Commission''). The commenters were concerned that viable developments would unfairly be required to conduct the required cost analysis. One of the commenters wrote that the proposed rule did not consider current market and employment conditions that affect the vacancy rate. The commenter also wrote that the proposed rule failed to address the fact that developments may become distressed due to lack of modernization funding. Another commenter wrote that the proposed 10 percent vacancy rate was too low, and noted that the Commission used a 15 percent vacancy rate.

HUD Response. HUD has revised the rule to be more sensitive to the concerns expressed by the commenters. Specifically, the final rule raises the vacancy rate used for purposes of determining distress from 10 percent to 15 percent for the first five years following the effective date of the final rule. A 12 percent vacancy will be used following the expiration of this five-year period. The purpose of the required conversion program is to identify those developments whose non-viability and cost, relative to vouchers, merit their permanent removal from public housing stock, even though the PHA did not previously decide to take this step on its own. The use of a higher vacancy rate better focuses required conversion on the situations where this step is most clearly needed.

Comment: Final rule should require that a PHA take remedial steps in those cases where the PHA has intentionally created vacancies. Two commenters wrote that the proposed vacancy criterion failed to consider whether a PHA has intentionally or artificially created vacancies at the development. According to the commenters, a PHA could create such vacancies by failing to make timely repairs or failing to lease available units. The commenters agreed that to ''the extent that a PHA intentionally or artificially creates vacancies at a development, HUD should require the PHA to take corrective actions necessary to lease the units.'' One of the commenters suggested that HUD include an additional category of units that will not be considered in the vacancy determination—units that are intentionally vacant as a result of a PHA's desire to trigger mandatory conversion.

HUD response. HUD agrees that a rule change is required to prevent the intentional creation of vacancies. In response to these public comments, the final rule provides that vacant units will not be considered in the determination of distress if HUD determines, in its sole discretion, that the vacancies were created intentionally and do not indicate continued distress.

2. Comments Regarding the Long-term Viability Test

Comment: Requiring that PHAs meet all four long-term viability factors contradicts statute. Under the proposed rule, a PHA must meet four regulatory factors in order for a development to satisfy the long-term viability test. Specifically, the development, after reasonable investment for at least 20 years, must: (1) Be able to sustain structural/system soundness and full occupancy; (2) not be excessively densely configured relative to other similar (typically family) housing in the community; (3) be able to achieve a broader range of family income; and (4) have no other site impairments that clearly should disqualify the site from continuation as public housing. Two commenters wrote that this requirement is in direct conflict with section 33(a)(3)(A) of the 1937 Act. According to the commenters, the statute only requires that a development meet one of three statutory factors. The commenters urged that the final rule provide that a PHA may satisfy the long-term viability test if it meets any one of the regulatory factors.

HUD response. HUD does not agree with these commenters. The regulatory language is nearly identical to the statutory language of section 33(a)(3)(A). The regulatory provisions opposed by the commenters merely interpret and clarify this statutory language. The final rule continues to provide, as authorized by the statutory language of section 33, that a PHA must meet all the regulatory factors to satisfy the long-term viability test. Each of the factors measures a different and important aspect of a development's viability. Relying on only one of the factors, as the commenters suggest, would ignore the other elements necessary for an accurate assessment of a development's long-term integrity as public housing. Further, HUD believes that the factors are sufficiently flexible to address the concerns raised by the commenters regarding the strictness of the long-term viability test.

Comment: Density standard exceeds statutory language. The proposed rule provided that a development satisfies the long-term viability test if it is not ''excessively densely configured relative to standards for similar (typically family) housing in the community.'' One commenter wrote that the proposed standard exceeded the standard established under section 33(a)(3)(A) of the 1937 Act. The statute provides that the long-term viability test may be satisfied by ''density reduction.'' The commenter wrote that the ''statute does not authorize a test that compares the relative densities of the development and the surrounding neighborhood, but merely requires the current density of the development to be reduced.''

HUD response. The use of relative density levels is consistent with the recommendations made by the Commission. The density reduction efforts of a PHA cannot be accurately evaluated without considering the density of comparable housing. For example, housing density varies among communities due to differences in local conditions, such as population, geography, and location of employment. Accordingly, this final rule continues to require that the density of a development be measured against the density of other similarly situated housing.

Comment: Income mix standard exceeds statutory standard. The proposed rule provided that a development satisfies the long-term viability test if it ''will not constitute an excessive concentration of very low-income families.'' Two commenters wrote that the proposed standard exceeded the statutory standard set forth in section 33(a)(3)(A) of the 1937 Act. The statute provides that the long-term viability test may be satisfied by ''the achievement of a broader range of family income.'' One of the commenters wrote that the ''distinction is critical because a PHA can meaningfully broaden the income range and still have a resident population that is primarily very low-income.'' The second commenter wrote that ''[g]iven that the analysis must project over a 20-year period, it is mere speculation to maintain that the site will be a candidate for additional mixing.''

HUD response. In response to these public comments HUD has revised the income-mix component of the long-term viability test to more closely track the statutory language of section 33. Specifically, the final rule provides that a development satisfies the income-mix requirements if, after reasonable investment for the specified period of time, it is probable that the development ''can achieve a broader range of family income.''

Comment: ''More expensive'' criterion should be removed. A development must be converted if it would be more expensive to modernize and operate the development for its remaining useful life than to provide tenant-based assistance to all residents. One commenter objected to this criterion for conversion. The commenter wrote that section 33 cites only to ''reasonable modernization expenses.'' ''There is nothing in the statute that suggests a development must be cheaper than Section 8 assistance in order to be viable in the long term.''

HUD response. The regulatory language closely tracks the statutory language of section 33. Specifically, section 33(a)(3) provides that a development is subject to required conversion if the development is identified as distressed housing by the PHA, in accordance with HUD guidelines, and either: (1) The PHA cannot assure long-term viability; or (2) the development has an estimated cost (during its remaining useful life) of continued operation and modernization as public housing that exceeds the estimated cost (during its remaining useful life) of providing voucher tenant-based assistance for all families in occupancy based on appropriate indicators of cost (such as the percentage of total development costs required for modernization). Accordingly, HUD has not revised the proposed rule to adopt the suggestions made by the commenter.

3. Comments Regarding Issues for Which HUD Specifically Invited Public Comment

Although HUD invited public comments on all aspects of the June 23, 1999, proposed rule, the preamble to the proposed rule specifically solicited comments on two issues related to the standards for identifying developments subject to required conversion. HUD solicited comments on:

1. Whether the definition of ''distressed housing'' should include developments with less than 250 units or that are not primarily occupied by families; and

2. Whether a comparison of the average median income at a development with the average median income in the development's area, or other measure of tenant income, should be included in the identification of developments as distressed.

Comment: Final rule should not require conversion for developments with less than 250 units or that are not primarily occupied by families. Four commenters made this recommendation. According to one of the commenters, including developments with less than 250 units,

would impede local decision-making and further drain HUD resources. In addition, the commenter wrote that including smaller developments is unnecessary due to the voluntary conversion provisions of section 533 of QHWRA. Smaller developments would be able to convert using the voluntary procedures of section 533 and HUD's implementing regulations.

HUD response. HUD agrees with the commenters. Accordingly, the final rule adopts the proposed rule provisions exempting developments with less than 250 units, or that are not primarily occupied by families, from the required conversion requirements. However, a PHA may elect to voluntarily convert such a development under the voluntary conversion program established by separate final rule published elsewhere in today's **Federal Register** (so long as the development satisfies the criteria for voluntary conversion).

Comment: Average median income comparison should not be required. One commenter objected to requiring PHAs to compare the average median income at a development with the average median income in the development's area. The commenter recognized that the Commission found this ratio highly significant. However, the commenter wrote that the measures included in the proposed rule are ''more than sufficient for a reasonable person to draw the conclusions necessary.'' The commenter recommended that any use of the income ratio analysis should be at the option of the PHA. In addition, the commenter recommended that a PHA should be given the flexibility to gather and present such data using the methods and formats most useful to the PHA.

HUD response. HUD agrees with the commenter and has not revised the proposed rule to require a comparison of average median income.

B. Comments Regarding Standards for Determining Whether a Property is Viable in the Long Term (§ 972.105 of the Proposed Rule; § 972.127 of This Final Rule)

The proposed rule at § 972.105 described the conditions that a development must meet in order to satisfy the long-term viability standard.

Comment: PHAs should not be required to identify sources of funding. A PHA must identify the sources of funding for a revitalization program. One commenter wrote that this requirement is ''unreasonable'' because the ''revitalization may be several years down the road and the PHA cannot determine what its annual appropriations will be or how much money will be needed.'' The commenter suggested that the requirement be eliminated.

HUD response. HUD believes that an estimate of available funding is necessary to accurately assess the probable success of a revitalization plan. In recognition that PHAs receive capital funds by formula, the final rule permits PHAs to ''assume that future formula funds provided through the Capital Fund over five years are available for this purpose'' (*see* § 972.127(a)(3)). Nothing in this final rule prevents PHAs from applying for HOPE VI or other additional funding to assist in the revitalization or replacement of a development during the 5-year phase-out period. PHAs, however, may not assume that they will be successful in discretionary grant competitions, such as for HOPE VI funding. PHAs may apply for HOPE VI and other discretionary grants during the 5-year phase-out period, provided the use of such grants will be consistent with the requirements of this final rule.

C. Comments Regarding Conversion Plan Components (§ 972.107 of the Proposed Rule; § 972.130 of This Final Rule)

The proposed rule at § 972.107 described the various components of a conversion plan.

Comment: More notice of displacement should be required. The proposed rule would have required a PHA to notify families residing in the development 90 days before displacement. Two commenters wrote that if ''displacement'' is synonymous with a family vacating the unit, the 90-day notice is inadequate. The commenters wrote that a family may need more than 90 days to find and relocate to other affordable housing. The commenters also wrote that, under the Section 8 rental voucher program, families generally have 120 days to locate housing. Further, for families with school-age children, relocation during the school term will seriously disrupt the children's education and jeopardize related child-care arrangements. One of the commenters recommended that the final rule require PHAs to provide families with six months advance notice of their relocation rights, wherever feasible.

HUD response. In accordance with URA, this final rule provides that a family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, in accordance with the final rule. In addition, the final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be provided to the family at least 90 days before conversion. PHAs should consider all relevant factors that might affect a family's ability to relocate (such as school age children) in determining the appropriate timeframes and should ensure that families are provided with adequate time to locate new housing.

Comment: Final rule should reference applicability of URA. One commenter suggested that the final rule should provide that URA applies to families displaced pursuant to a required conversion.

HUD response. HUD has adopted the commenter's suggestion. The final rule adds a new § 972.118, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the URA, and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply. Further, for purposes of clarity, HUD has revised the rule to more closely conform to the notice requirements of the URA and the implementing regulations. As required by 49 CFR 24.203, if a required conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

Comment: Final rule should clarify what constitutes housing choice for relocated families. Families have the right to be relocated to ''other decent, safe, and sanitary and affordable housing that is, to the maximum extent possible, housing of their choice.'' Two commenters recommended that the final rule clarify that a family may choose ''to lease any PHA rental unit of appropriate size, provided the rental unit is vacant or will be vacant before the date on which the tenant must vacate the converted rental unit.''

HUD response. The regulatory language adequately protects a displaced family's right to relocate to comparable housing, while also providing for circumstances that may limit the availability of a particular unit. For example, a PHA may need to reserve a public housing unit for medical transfer purposes. The broad language suggested by the commenter fails to provide for such necessary exceptions.

Accordingly, HUD has not adopted the commenter's recommended change.

Comment: Standard for extension is overly restrictive. Generally, a conversion plan may not be more than a 5-year plan. However, HUD is authorized to provide a 5-year extension ''in exceptional circumstances, where HUD determines that this is clearly the most cost-effective and beneficial means of providing housing over that same period.'' One commenter wrote that this is too restrictive, and inconsistent with section 33(c)(3) of the 1937 Act, which provides that HUD may grant an extension if it ''determines that the deadline is impracticable.''

HUD response. HUD does not agree that the regulatory language contradicts the statutory language of section 33. The statute provides HUD with broad authority to determine what circumstances make the 5-year deadline ''impracticable'' for a PHA. The final rule is consistent with the statutory goal of ensuring that most conversions be completed within the prescribed 5-year period, but grants HUD the necessary flexibility to address exceptional circumstances.

Comment: A fair housing impact assessment should be required. Two commenters recommended that the final rule should require the conversion plan to include an analysis of the effects of conversion on persons protected by the Fair Housing Act. The commenters wrote that even if a PHA is statutorily required to convert a particular development, HUD and the PHA have an obligation to avoid discriminatory impacts and to affirmatively further fair housing. One of the commenters suggested that the fair housing analysis should:

1. Consider the impact of conversion on each protected group: racial and ethnic minorities, persons with disabilities, and families with children;
2. Consider the impact not only on current residents, but also on persons likely to apply for housing;
3. Determine whether the proposed conversion will increase fair housing choice for each protected class, or perpetuate segregation;
4. Determine whether the proposed conversion will decrease fair housing choice (according to the commenter this would generally be true if the overall amount of assisted housing is reduced or if public housing units located outside high poverty areas with concentrations of minorities are converted);
5. Analyze the rate at which minority families and other protected groups are able to find housing under the Section 8 voucher program in areas that are racially integrated and have low poverty rates; and
6. Analyze whether all families in housing proposed to be converted will receive housing assistance and be able to remain in the area if they choose.

HUD response. HUD has determined that the proposed rule adequately addressed fair housing considerations, and that a regulatory change is unnecessary. The conversion plan must be part of the PHA's Annual Plan. HUD's PHA Plan regulations require that a PHA certify that it will carry out its Annual Plan and 5-Year Plan in conformity with applicable statutory fair housing and nondiscrimination requirements and must affirmatively further fair housing. This, of course, includes any required conversion activities. As noted above, HUD has also added language to the final rule further emphasizing the need for adequate mobility counseling.

Comment: Conversion plan should include a well funded mobility program to ensure fair housing objectives are met. One commenter wrote that without such a program, most families will find themselves relocated to highly segregated communities with high levels of poverty.

HUD response. The final rule clarifies that a PHA must provide any appropriate mobility counseling in providing the required counseling to residents displaced by a conversion. The PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding.

D. Comments Regarding the Public and Resident Consultation Process for Developing a Conversion Plan (§ 972.110 of the Proposed Rule; § 972.133 of This Final Rule)

The proposed rule at § 972.110 required that a PHA consult with public officials and the residents of the affected sites in the development of the PHA's conversion plan.

Comment: Final rule should expand the resident and public participation process. One commenter recommended that the minimum standards for public and resident participation should be expanded. The commenter made various specific suggestions, including:

1. Requiring the PHA to consult with the development's resident council and the PHA-wide resident advisory board;
2. Requiring that the required meeting with residents take place at least 45 days before the PHA submits the conversion plan to HUD; and
3. Requiring that the consultation process include adequate notice to residents and an opportunity for residents to comment. Further, HUD should require that a PHA give due consideration to all comments from residents and the public.

Another commenter emphasized the third suggestion made by the commenter above—that PHAs should be required to give due consideration to resident comments. The commenter wrote that this is necessary to allow the possibility that, based on resident comments, the PHA will determine that conversion is inappropriate. Further, if the PHA decides to proceed with conversion, then it should be required to consider the resident comments in the development of the final conversion plan.

HUD response. HUD agrees that meaningful public and resident input is essential to the success of the required conversion process. HUD does not believe that it is necessary to revise the proposed rule to adopt the suggestions made by these commenters. Existing regulatory requirements already ensure meaningful and timely public input in the development of the conversion plans. For example, the conversion plan must be part of the PHA's Annual Plan. The conversion plans, therefore, are subject to the extensive public participation requirements for the development of the PHA Annual Plans (*see* 24 CFR part 903). The consultation procedures established by this final rule supplement the PHA Plan consultation requirements; they do not replace them.

Among other requirements, the PHA Plan regulations require that PHAs establish Resident Advisory Boards to assist and make recommendations in the development of the PHA Annual Plans (*see* 24 CFR 903.13). PHAs are also required to conduct a public hearing in developing their Annual Plans, and to conduct reasonable outreach activities to encourage broad public participation in the PHA Plans (*see* 24 CFR 903.17). Considered in their totality, the consultation procedures contained in both the required conversion and PHA Plan regulations require that a PHA undertake good faith efforts to ensure that residents understand and have a voice in the implementation of required conversions.

For purposes of clarity, HUD has made two changes to the consultation requirements of the rule. Specifically, the final rule clarifies that the PHA must hold at least one meeting with the residents of the affected sites. The language of the proposed rule would have required one meeting between the PHA and residents, but was silent regarding the possibility of the PHA sponsoring additional meetings. The final rule also clarifies that the public

housing residents with whom the PHA must meet include any duly elected resident council that covers the development in question.

Comment: Consolidated Plan requirements are inconsistent with statute. The proposed rule provided that a PHA ''may satisfy the requirement for consultation with public officials by submitting a certification from the appropriate government official that the conversion plan is consistent with the applicable Consolidated Plan.'' The rule also provided that ''[t]his may be the same certification as is required for [the] PHA Annual Plan that includes the conversion plan.'' According to one commenter this contradicts the statutory language of section 33. According to the commenter, section 33(c)(2)(B) requires that the PHA submit a separate certification from the relevant local official that specifically addresses the conversion plan. This certification is in addition to the certification that is part of the PHA Annual Plan (which is already required under section 33(c)(2)(A)).

HUD response. The final rule clarifies that if a PHA elects to satisfy the consultation requirements by certifying that its conversion plan is consistent with the Consolidated Plan, this certification may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

E. Comments Regarding Relationship Between Required Conversion and Demolition/Disposition Requirements (§ 972.113 of the Proposed Rule; § 972.112 of This Final Rule) Application

The proposed rule at § 970.113 described the applicability of the demolition/disposition requirements of section 18 of the 1937 Act to the required conversion process.

Comment: PHAs should be permitted to submit the conversion plan and disposition application at a later date than the PHA Annual Plan. One commenter wrote that requiring a PHA to simultaneously submit a PHA Annual Plan, conversion plan, and disposition application is unnecessarily burdensome and will not produce the best results. The commenter recommended that a PHA be allowed to submit the conversion plan and the disposition application at a later date than the PHA Annual Plan—either as a separate submission or as addenda to the Annual Plan.

HUD response. HUD has not revised the proposed rule to adopt the commenter's suggestion. The regulatory language closely tracks the statutory requirements of section 33. Specifically, section 33(h)(2) provides that the disposition requirements of section 18 of the 1937 Act apply to required conversions. Further, section 33(c)(2)(A) requires that a conversion plan be submitted as part of the PHA's Annual Plan. However, neither section 33, or this final rule, requires a PHA to submit any required disposition application as part of the conversion plan or the Annual Plan. A PHA may elect to submit any disposition application subsequent to submission of the conversion plan. HUD may approve the conversion plan, even if the PHA has not yet submitted the required disposition application under section 18. However, the PHA may not proceed with the disposition until the required disposition application has been approved by HUD.

Comment: PHAs should not be required to submit separate disposition approval request. One commenter questioned the requirement for a separate disposition approval for required conversion, when HUD does not require it for voluntary conversions under section 533 of QHWRA. In particular, the commenter objected to the requirement in those cases where: (1) The development has had its debt forgiven; (2) there have been no additional capital investments; and (3) the subsidy has been removed in the conversion process. ''It would seem that under the circumstances, the property would be the PHA's to deal with as it sees fit.''

HUD response. As noted in HUD's response to the preceding comment, section 33 provides that the disposition requirements of section 18 of the 1937 Act apply to the required conversion program. The regulatory language of this final rule tracks this statutory requirement.

The final rule should clarify that HUD's approval of a conversion plan is contingent on HUD's approval of any disposition application for the converted units. One commenter wrote that it is unclear whether the proposed rule permits HUD to approve a conversion plan if the PHA's disposition application does not comply with the requirements of section 18 of the 1937 Act. The commenter suggested that, to encourage compliance with section 18, the final rule should clarify that HUD's approval of a conversion plan is contingent on approval of the PHA's disposition application.

HUD response. As noted above, a PHA may elect to submit any disposition application subsequent to submission of the conversion plan. HUD may approve the conversion, even if the PHA has not yet submitted the required disposition application. However, the PHA may not proceed with the conversion until its disposition application has been approved by HUD.

F. Comments Regarding the Relationship Between Required Conversion and HOPE VI Developments (§ 972.114 of the Proposed Rule; § 972.115 of This Final Rule)

The proposed rule at § 972.114 described the applicability of the required conversion requirements to HOPE VI developments.

Comments: HOPE VI recipients without an approved revitalization plan should not be required to conduct a viability assessment. HOPE VI developments without an approved revitalization plan are fully subject to the required conversion standards of 24 CFR part 972. One commenter objected to this requirement. The commenter wrote that requiring these HOPE VI developments to conduct a viability assessment is ''extraordinarily redundant'' because ''each HOPE VI recipient was approved based on an application [that] included the number of units removed.'' ''Another evaluation is unnecessary, redundant, and impedes the implementation of HOPE VI.''

HUD response. Section 33 does not exempt HOPE VI developments from the required conversion requirements. Accordingly, HUD does not have the statutory authority to adopt the commenter's suggestion. HUD will only approve HOPE VI revitalization plans that satisfy the conversion plan requirements.

G. Comments Regarding Funding To Assist Residents of Units Being Converted (§ 972.116 of the Proposed Rule; § 972.109 of This Final Rule)

The proposed rule at § 972.116 described how a PHA obtains funding to assist the residents of public housing developments converted to tenant-based assistance.

Comment: HUD should not require that funding for the first year of tenant-based assistance be provided from the Capital or Operating Funds. Two commenters objected to this provision. One of the commenters wrote that it would be unfair for HUD to expect PHAs to pay for one year of tenant-based assistance from the Capital and Operating Funds, since formula funding will have been reduced subsequent to the removal of the development from public housing inventory. The second commenter wrote that ''[t]he effect of siphoning off and further reducing

public housing funds for tenant-based assistance will be the continued deterioration of public housing.'' ''[O]perating and capital funds are appropriated to ensure the preservation of public housing as an affordable housing resource and, as such, any funds attributable to developments identified for conversion should be re-invested in the public housing stock.''

HUD response. HUD has not adopted the change requested by the commenters. The final rule does not mandate that the initial year of tenant-based assistance be provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this possibility.

HUD should provide additional guidance regarding post-conversion. One commenter wrote that it would be helpful for HUD to clarify the timing of the phased process for substituting tenant-based assistance for assistance provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this subsidy for the units being converted.

HUD response. Converted public housing would be phased-out using currently applicable procedures. Subject to appropriations, new Section 8 funding would be committed and provided to PHAs for the provision of tenant-based voucher assistance.

H. Comments Regarding the Timing of Conversion (§ 972.122 of the Proposed Rule; § 972.109 of This Final Rule)

The proposed rule at § 972.122 provided that a PHA may proceed to convert a development only after receiving written approval from HUD. The approval will be separate from the one provided for the PHA Annual Plan.

Comment: HUD should establish a reasonable time frame for providing approval of a conversion plan. One commenter suggested that the final rule establish a 75-day period for HUD review and approval of conversion plans. According to the commenter, this ''will enable PHAs to better plan relocation activities with residents and make adjustments necessary for the loss of subsidy.'' The commenter wrote that a 75-day period would conform to the time frame established for HUD approval of the PHA Annual Plan.

HUD response. HUD has revised the rule to be more sensitive to the concerns raised by the commenter. The final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.130, 970.133, and 972.136 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0234. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that are subject to this rule are public housing agencies that administer public housing. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. Most PHAs with developments large enough to be subject to this final rule are located in larger political jurisdictions. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on larger troubled agencies.

(2) *No Significant Economic Impact.* The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a

''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 972

Grant programs—housing and community development, Low and moderate income housing, Public housing.

■ For the reasons discussed in the preamble, HUD amends title 24 of the Code of Federal Regulations, chapter IX, part 972 as follows:

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

■ 1. The authority citation for part 972 continues to read as follows:

Authority: 42 U.S.C. 1437t, 1437z–5, and 3535(d).

■ 2. Subpart A is added to read as follows:

Subpart A—Required Conversion of Public Housing Developments

Purpose; Definition of ''Conversion''

Sec.
972.100 Purpose.
972.103 Definition of ''conversion.''

Required Conversion Process

972.106 Procedure for required conversion of public housing developments to tenant-based assistance.
972.109 Conversion of developments.
972.112 Relationship between required conversion and demolition/disposition requirements.
972.115 Relationship between required conversion and HOPE VI developments.
972.118 Applicability of Uniform Relocation Act.

Identifying Developments Subject To Required Conversion

972.121 Developments subject to this subpart.
972.124 Standards for identifying public housing developments subject to required conversion.
972.127 Standards for determining whether a property is viable in the long term.

Conversion Plans

972.130 Conversion plan components.
972.133 Public and resident consultation process for developing a conversion plan.
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HUD Actions With Respect To Required Conversions

972.139 HUD actions with respect to required conversions.

Subpart A—Required Conversion of Public Housing Developments

Purpose; Definition of Conversion

§ 972.100 Purpose.

The purpose of this subpart is to implement section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5), which requires PHAs to annually review their public housing inventory and identify developments, or parts of developments, which must be removed from its stock of public housing operated under an Annual Contributions Contract (ACC) with HUD.

This subpart provides the procedures a PHA must follow to develop and carry out a conversion plan to remove the units from the public housing inventory, including how to provide for the transition for residents of these developments to other affordable housing.

§ 972.103 Definition of ''conversion.''

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based or project-based assistance for the residents of the public housing units that are being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development.

Required Conversion Process

§ 972.106 Procedure for required conversion of public housing developments to tenant-based assistance.

(a) A PHA must annually review its public housing inventory and identify developments, or parts of developments, which must be converted to tenant-based assistance, in accordance with §§ 972.121–972.127.

(b) With respect to any public housing development that is identified under paragraph (a) of this section, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory, in accordance with §§ 972.130–972.136.

(c) The PHA may proceed to convert the development if HUD approves the conversion plan.

§ 972.109 Conversion of developments.

(a)(1) The PHA may proceed to convert the development covered by a conversion plan after receiving written approval from HUD. This approval will be separate from the approval that the PHA receives for its Annual Plan.

(2) HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

(b) The PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for removal from the PHA's inventory and may authorize the PHA to undertake other activities proposed in its conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, HUD will consider the conversion plan the PHA submits to be the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC. HUD will notify the PHA in writing whether it has approved the conversion plan. Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title and also will be provided any phase-down of subsidy to which the PHA is entitled pursuant to § 990.114 of this title.

(d) The PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give the PHA a priority for receiving tenant-based assistance to replace the public housing units. It is HUD's policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available. HUD

may require that funding for the initial year be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.112 Relationship between required conversion and demolition/disposition requirements.

(a) Section 18 of the United States Housing Act of 1937 does not apply to demolition of developments removed from the inventory of the PHA under this subpart. Demolition of these developments is therefore not subject to section 18(g), which provides an exclusion from the applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA). Accordingly, the URA will apply to the displacement of tenants as the direct result of the demolition of a development carried out pursuant to this subpart, in accordance with § 972.118. With respect to any such demolition, the PHA must comply with the requirements for environmental review found at part 58 of this title.

(b) Section 18 of the United States Housing Act of 1937 does apply to any disposition of developments removed from the inventory of the PHA under this subpart. Therefore, to dispose of property, the PHA must submit a disposition application under section 18. HUD's review of any such disposition application will take into account that the development has been required to be converted.

§ 972.115 Relationship between required conversions and HOPE VI developments.

HUD actions to approve or deny proposed HOPE VI revitalization plans must be consistent with the requirements of this subpart. Developments with HOPE VI revitalization grants, but without approved HOPE VI revitalization plans, are fully subject to required conversion standards under this subpart.

§ 972.118 Applicability of Uniform Relocation Act.

To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

Identifying Developments Subject To Required Conversion

§ 972.121 Developments subject to this subpart.

(a) This subpart is applicable to any development not identified before October 21, 1998, for conversion, or for assessment of whether such conversion is required, in accordance with section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996, 110 Stat. 1321–279—1321–281). Developments identified before October 21, 1998, continue to be subject to the requirements of section 202 and part 971 of this chapter until these requirements are satisfied. Thereafter, the provisions of this subpart apply to any remaining public housing on the sites of those developments.

(b) The developments to which this subpart is applicable are subject to the requirements of section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5).

(c) The provisions of this subpart cease to apply when the units in a development that are subject to the requirements of this subpart have been demolished.

§ 972.124 Standards for identifying public housing developments subject to required conversion.

The development, or portions thereof, must be converted if it is a general occupancy development of 250 or more dwelling units and it meets the following criteria:

(a) *The development is on the same or contiguous sites.* This refers to the actual number and location of units, irrespective of HUD development project numbers.

(b) *The development has a vacancy rate of at least a specified percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years.* (1) For a conversion analysis performed on or before March 16, 2009, the specified vacancy rate is 15 percent. For a conversion analysis performed after that date, the specified vacancy rate is 12 percent.

(2) For the determination of vacancy rates, the PHA must use the data it relied upon for the PHA's latest Public Housing Assessment System (PHAS) certification, as reported on the Form HUD–51234 (report on Occupancy). Units in the following categories must not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if state law requires the property to be left in the unit for some period of time, and only for the period of time stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted;

(iv) Units that are occupied by employees of the PHA and units that are used for resident services; and

(v) Units that HUD determines, in its sole discretion, are intentionally vacant and do not indicate continued distress.

(c) *The development either is distressed housing for which the PHA cannot assure the long-term viability as public housing, or more expensive for the PHA to operate as public housing than providing tenant-based assistance.* (1) The development is distressed housing for which the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (See § 972.127)

(i) Properties meeting the standards set forth in paragraphs (a) and (b) of this section will be assumed to be ''distressed,'' unless HUD determines that the reasons a property meets such standards are temporary in duration and are unlikely to recur.

(ii) A development satisfies the long-term viability test only if it is probable that, after reasonable investment, for at least 20 years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to other similar rental (typically family) housing in the community; can achieve a broader range of family income; and has no other site impairments that clearly should disqualify the site from continuation as public housing.

(2) The development is more expensive for the PHA to operate as public housing than to provide tenant-based assistance if it has an estimated cost, during the remaining useful life of the project, of continued operation and modernization of the development as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(i) For purposes of this determination, the costs used for public housing must be those necessary to produce a revitalized development as described in paragraph (c)(1) of this section.

(ii) These costs, including estimated operating costs, modernization costs, and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) The cost methodology necessary to conduct the cost comparisons for required conversions has not yet been finalized. PHAs are not required to undertake conversions under this subpart until six months after the effective date of the cost methodology, which will be announced in the **Federal Register**. Once effective, the cost methodology will be codified as an appendix to this part.

§ 972.127 Standards for determining whether a property is viable in the long term.

In order for a property to meet the standard of long-term viability, as discussed in § 972.124, the following criteria must be met:

(a) *The investment to be made in the development is reasonable.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost (TDC) limit for the units proposed to be revitalized (100 percent of the total development cost limit for any ''infill'' new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent Annual Plan or 5-Year Plan is to be used for this purpose, unless the PHA demonstrates, or HUD determines, that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and available. In addition to other resources already available to the PHA, it may assume that future formula funds provided through the Capital Fund over five years are available for this purpose.

(b) *Appropriate density is achieved.* The resulting public housing development must have a density which is comparable to that which prevails in or is appropriate for assisted rental housing or for other similar types of housing in the community (typically family).

(c) *A greater income mix can be achieved.* (1) Measures generally will be required to broaden the range of resident incomes over time to include a significant mix of households with at least one full-time worker. Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Appropriate evidence typically would include census or other recent statistical evidence demonstrating some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

Conversion Plans

§ 972.130 Conversion plan components.

(a) With respect to any development that is identified under §§ 972.121 through 972.127, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory. The plan must consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and must provide for relocation from the units as soon as possible. For planning purposes, the PHA must assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan must include:

(1) A listing of the public housing units to be removed from the inventory;

(2) Identification and obligation status of any previously approved modernization, reconstruction, or other capital funds for the distressed development and the PHA's recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(3) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 972.133;

(4) A description of the plans for demolition or disposition of the public housing units; and

(5) A relocation plan, in accordance with paragraph (b) of this section.

(b) *Relocation plan.* The relocation plan must incorporate all of the information identified in paragraphs (b)(1) through (b)(4) of this section. In addition, if the required conversion is subject to the URA, the relocation plan must also contain the information identified in paragraph (b)(5) of this section. The relocation plan must incorporate the following:

(1) The number of households to be relocated, by bedroom size, and by the number of accessible units.

(2) The relocation resources that will be necessary, including a request for any necessary Section 8 funding and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing and budget for carrying out relocation activities.

(3) A schedule for relocation and removal of units from the public housing inventory (including the schedule for providing actual and reasonable relocation expenses, as determined by the PHA, for families displaced by the conversion).

(4) Provide for issuance of a written notice to families residing in the development in accordance with the following requirements:

(i) *Timing of notice.* If the required conversion is not subject to the URA, the notice shall be provided to families at least 90 days before displacement. If the required conversion is subject to the URA the written notice shall be provided to families no later than the date the conversion plan is submitted to HUD. For purposes of a required conversion subject to the URA, this written notice shall constitute the General Information Notice (GIN) required by the URA.

(ii) *Contents of notice.* The written notice shall include all of the following:

(A) The development must be removed from the public housing inventory and that the family may be displaced as a result of the conversion;

(B) The family will be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA (if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon the relocation of the family into such housing);

(C) Any necessary counseling with respect to the relocation will be provided, including any appropriate mobility counseling (the PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding);

(D) Such families will be relocated to other decent, safe, sanitary, and

affordable housing that is, to the maximum extent possible, housing of their choice;

(E) If the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent; and

(F) Where section 8 voucher assistance is being used for relocation, the family will be provided with the vouchers at least 90 days before displacement.

(5) If the required conversion is subject to the URA, the written notice described in paragraph (b)(4) must also provide that:

(i) The family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, as provided in paragraph (b)(4)(ii)(B) of this section;

(ii) Any person who is an alien not lawfully present in the United States is ineligible for relocation payments or assistance under the URA, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as provided in the URA regulations at 49 CFR 24.208;

(iii) The family has a right to appeal the PHA's determination as to the family's application for relocation assistance for which the family may be eligible under this subpart and URA;

(iv) Families residing in the development will be provided with the URA Notice of Relocation Eligibility or Notice of Non-displacement (as applicable) as of the date HUD approves the conversion plan (for purposes of this subpart, the date of HUD's approval of the conversion plan shall be the ''date of initiation of negotiations'' as that term is used in URA and the implementing regulations at 49 CFR part 24); and

(v) Any family that moves into the development after submission of the conversion plan to HUD will also be eligible for relocation assistance, unless the PHA issues a written move-in notice to the family prior to leasing and occupancy of the unit advising the family of the development's possible conversion, the impact of the conversion on the family, and that the family will not be eligible for relocation assistance.

(c) The conversion plan may not be more than a 5-year plan, unless the PHA applies for and receives approval from HUD for a longer period of time. HUD may allow the PHA up to 10 years to remove the units from the inventory, in exceptional circumstances where HUD determines that this is clearly the most cost effective and beneficial means of providing housing assistance over that same period. For example, HUD may allow a longer period of time to remove the units from the public housing inventory, where more than one development is being converted, and a larger number of families require relocation than can easily be absorbed into the rental market at one time, provided the housing has a remaining useful life of longer than five years and the longer time frame will assist in relocation.

§ 972.133 Public and resident consultation process for developing a conversion plan.

(a) The PHA must consult with appropriate public officials and with the appropriate public housing residents in developing the conversion plan.

(b) The PHA may satisfy the requirement for consultation with public officials by obtaining a certification from the appropriate government official that the conversion plan is consistent with the applicable Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for consultation with the appropriate public housing residents, in addition to the public participation requirements for the PHA Annual Plan, the PHA must:

(1) Hold at least one meeting with the residents of the affected sites (including the duly elected Resident Council, if any, that covers the development in question) at which the PHA must:

(i) Explain the requirements of this section, especially as they apply to the residents of the affected developments; and

(ii) Provide draft copies of the conversion plan to the residents;

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD, in the conversion plan, and consider these comments in developing the final conversion plan.

§ 972.136 Timing of submission of conversion plans to HUD.

The requirements of this section are on-going requirements. If the PHA must submit a plan for conversion, it must submit the conversion plan as part of the PHA's Annual Plan, beginning with PHA fiscal years that commence six months after the effective date of HUD's final rule establishing the cost methodology for required conversions.

HUD Actions With Respect to Required Conversions

§ 972.139 HUD actions with respect to required conversions.

(a) HUD will take appropriate steps to ensure that distressed developments subject to this subpart are properly identified and converted. If a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion, HUD will take the actions described in paragraph (b) of this section, and may also take any or all of the actions described in paragraph (c) of this section.

(b) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD will:

(1) Disqualify the PHA from HUD funding competitions; and

(2) Direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety.

(c) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD may also take any or all of the following actions:

(1) Identify developments that fall within the statutory criteria where the PHA has failed to do so properly;

(2) Take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan;

(3) Require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section;

(4) Authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency; and

(5) Any other action that HUD determines appropriate and has the authority to undertake.

Dated: August 11, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–23026 Filed 9–16–03; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR–4476–F–04]

RIN 2577–AC02

Voluntary Conversion of Developments From Public Housing Stock

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule furthers HUD's implementation of section 533 of the Quality Housing and Work Responsibility Act of 1998. Section 533 authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of the development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. Since the cost methodology necessary to conduct the cost comparisons for voluntary conversions has not yet been finalized, PHAs may not undertake conversions under this final rule until the effective date of the cost methodology. HUD is publishing a proposed rule elsewhere in today's **Federal Register**, to provide the public with an opportunity to comment on the methodology that HUD proposes be used for the required cost comparisons. This final rule follows publication of a July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The July 23, 1999, Proposed Rule

On July 23, 1999 (64 FR 40240), HUD published for public comment a proposed rule to implement section 533 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998) (QHWRA).

Section 533 of QHWRA amended section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). As amended, section 22 authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. In the July 23, 1999, proposed rule, HUD proposed to implement the voluntary conversion requirements through the creation of a new 24 CFR part 972, subpart B.

In addition to permitting voluntary conversions, QHWRA revised the provisions governing the program of required conversions. Section 537 of QHWRA added a new section 33 to the 1937 Act, entitled ''Required Conversion of Distressed Public Housing to Tenant-Based Assistance.'' A separate proposed rule was published on July 23, 1999 (64 FR 40232), to implement these provisions through a new 24 CFR 972, subpart A. The final rule that will make these proposed amendments effective is published elsewhere in today's **Federal Register**.

II. The June 22, 2001, Final Rule on Required Initial Assessments

Section 22 of the 1937 Act also requires every PHA to conduct and submit to HUD an initial conversion assessment for its developments no later than October 1, 2001 (*see* section 22(b) of the 1937 Act). However, the statute gives HUD the authority to exempt certain classes of developments from this requirement, or streamline the requirements of the required initial assessment. On June 22, 2001 (66 FR 33616), HUD published a final rule providing regulatory guidance on the preparation and submission of these assessments in a streamlined, simplified form. The June 22, 2001, final rule also took into consideration the public comments received on the proposed initial assessment requirements contained in the July 23, 1999, proposed rule.

For the convenience of readers, the regulatory text of this final rule repeats (but does not modify) the required initial assessment requirements contained in the June 22, 2001, final rule. However, interested readers should refer to the June 22, 2001, final rule for a detailed discussion of these requirements, and of HUD's responses to the public comments on the proposed initial assessment procedures.

III. Cost Methodology for Conversions

This final rule does not address the cost methodology that PHAs must use for the required and voluntary conversion of public housing developments. Both conversion processes require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. This methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the cost methodology, based on both the public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, HUD is delaying the effective date of this rule for a period of six months (180 days) following publication (as opposed to the customary 30-day period). HUD's goal is to have a final rule establishing the cost methodology in effect by this date. Delaying the effective date of this rule for six months will permit the final rule to take effect as close as possible to the targeted effective date for the cost methodology. While the cost methodology is being completed, PHAs may wish to prepare for voluntary conversions by using the proposed methodology contained in the HUD

proposed rule being published today. However, because final methodology may differ from what is contained in the proposed rule, PHAs should not assume that the proposed cost test will be final with respect to possible required or voluntary conversions.

IV. This Final Rule

This final rule furthers HUD's implementation of the voluntary conversion program authorized by amended section 22 of the 1937 Act. The final rule follows publication of the July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

The major differences between this final rule and the July 23, 1999, proposed rule are described below.

A. General Changes

1. *Initial assessment requirements not addressed in this final rule.* As noted above in section II of this preamble, this final rule does not address the initial assessment requirements contained in the July 23, 1999, proposed rule. These requirements were the subject of a separate June 22, 2001, HUD final rule. Interested readers should refer to that final rule for a detailed discussion of the streamlined initial assessment requirements, and HUD's responses to the public comments received on the initial assessment procedures contained in the proposed rule. For the convenience of readers, the regulatory text of this final rule repeats the initial assessment requirements established by the June 22, 2001, final rule, but does not modify these requirements.

2. *Cost methodology subject of separate HUD rulemaking.* As noted above in section III of this preamble, this final rule does not address the cost methodology that PHAs must use to compare the cost of public housing with the provision of tenant-based assistance. HUD has decided to significantly revise the cost methodology contained in the July 23, 1999, proposed rule. HUD has, therefore, issued a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons. PHAs may not undertake the cost test necessary for conversions until HUD's publication of the final rule establishing the cost methodology.

3. *Reorganization of voluntary conversion requirements.* For purposes of clarity, this final rule reorganizes several of the regulatory provisions contained in the proposed rule. For example, the final rule now groups all regulatory provisions concerning similar subject matter (such as the voluntary conversion process or conversion plans) under undesignated headings that identify the subject of the related requirements. In addition, the final rule replaces the question and answer format used in the proposed rule with standard section headings that identify the subject of the regulatory provisions.

4. *Applicability of the Uniform Relocation Act.* This final rule adds a new § 972.215, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

B. Changes Regarding Conversion Assessment Requirements

1. *Payment standard use for analysis of rental market conditions.* This final rule continues to require that a PHA conduct an analysis of rental market conditions as part of a conversion assessment required for approval of voluntary conversion. This analysis must include an assessment of the availability of decent and safe dwelling units rented at or below the payment standard established for Section 8 tenant-based assistance. This final rule clarifies that the payment standard used for this determination is the applicable section 8 payment standard for the jurisdiction or designated part of the FMR area in which the development is located.

2. *Tenant-based success rates.* This final rule continues to require that, as part of the analysis of rental market conditions, the PHA consider the success rate of using Section 8 tenant-based assistance in the community for the appropriate bedroom size. The final rule, however, clarifies that this determination includes recent success rates for units renting at or below the established payment standard.

3. *Characteristics that may affect a family's ability to be housed.* This final rule continues to provide that, as part of the required analysis of rental market conditions, a PHA must consider any particular characteristics of the specific residents of the public housing that may affect their ability to be housed. For purposes of clarity, the regulatory text has been revised to provide two examples of such characteristics—large household size and the presence of an elderly or disabled family member. These examples are meant to illustrate the types of characteristics that a PHA should consider in making this determination. The examples do not preclude a PHA from considering other characteristics that may impact a family's ability to locate housing.

4. *Consideration of other substantial impacts.* This final rule clarifies that, in addition to the identified potential impacts of conversion, the required impact analysis must also assess ''any other substantial impacts on the neighborhood.''

5. *Additional guidance on what it means to ''principally benefit'' residents, the PHA, and the community.* This final rule clarifies that in determining whether conversion will principally benefit public housing residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing section 8 tenant-based assistance, as well as access to schools, jobs, and transportation. Further, the final rule provides that, in determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

6. *Resident participation in development of conversion assessments.* This final rule expands the resident participation process for developing a conversion assessment. The conversion assessment consultation process established by this final rule is similar to the consultation process for conversion plans. Specifically, the final rule requires a PHA to hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must explain the voluntary conversion requirements (especially as they apply to residents of affected developments), and provide draft copies of the conversion assessment to the residents. The PHA must also provide the residents with a reasonable period of time to submit comments on the draft conversion assessment. The conversion assessment submitted to HUD must contain a summary of the resident comments, as well as the PHA responses to any significant issues raised by the commenters. (This process may be combined with the process for submitting a conversion plan if the PHA will submit the assessment and plan to HUD together, but otherwise must be

undertaken separately from the process for submitting a conversion plan.)

C. Changes Regarding Conversion Plan Requirements

1. *Required consultation with resident council.* This final rule clarifies that the PHA must meet to discuss the proposed conversion with any duly elected resident council that covers the development in question.

2. *Conversion plan consistency with conversion assessment.* This final rule requires that a conversion plan include a description of the plan's consistency with the findings of the conversion assessment.

3. *Relocation plan.* This final rule provides that the relocation-related requirements of a conversion plan must be contained in a relocation plan, which must include a budget for carrying out relocation activities.

4. *Schedule for the provision of moving expenses.* This final rule clarifies that a voluntary conversion plan must also include a timetable for the provision of moving services and/or expenses (including a description of the amounts).

5. *Consideration of resident comments received on conversion plan.* This final rule clarifies that the conversion plan must not only include a summary of the resident comments received during the development of the plan, but must also contain the PHA responses to the comments (including a description of any actions taken by the PHA as a result of the comments).

6. *URA notices of displacement.* For purposes of clarity, HUD has revised the rule to more closely conform to the notice requirements of the URA and the implementing regulations at 49 CFR part 24. As required by 49 CFR 24.203, if a voluntary conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

The General Information Notice provides families subject to displacement with certain information regarding their rights under URA. Under the URA regulation at 49 CFR 24.203, persons subject to displacement must be provided with the General Information Notice ''as soon as feasible.'' Accordingly, this final rule requires that the PHA provide families with the General Information Notice no later than the date the conversion plan is submitted to HUD.

The Notice of Relocation eligibility advises families subject to displacement that they are eligible for relocation assistance as of a certain date that agencies are free to define (called the ''date of initiation of negotiations'' in the URA regulations). This final rule provides that, for purposes of voluntary conversions, the ''date of initiation of negotiations'' shall be the date that HUD approves the conversion plan.

HUD Handbook 1378.0, ''Tenant Assistance, Relocation and Real Property Acquisition'' (issued on March 28, 1996), provides additional details and helpful information regarding the basic statutory and regulatory requirements that must be followed by an agency that carries out real property acquisition or the displacement of a person for a project or program for which HUD financial assistance is provided, including the notice requirements discussed above. Interested persons may download a copy of Handbook 1378.0 through HUD's Client Information and Policy System (HUDCLIPS) Web Page at *http://www.hudclips.org*.

7. *Provision of voucher assistance used for relocation.* This final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be issued to the family at least 90 days before conversion.

8. *Actual and reasonable relocation expenses.* This final rule clarifies that the PHA has the discretion to define whether a relocation cost is actually or reasonably related to the family's relocation and, therefore, reimbursable.

9. *Mobility counseling.* For purposes of clarity, this final rule specifies that the required PHA counseling to displaced families must include appropriate mobility counseling.

10. *Timing of submission of conversion plan.* This final rule clarifies that a PHA must prepare a conversion plan, and submit it to HUD, as part of the next PHA Annual Plan, within one year after submitting the full conversion assessment, or as a significant amendment to that Annual Plan. The PHA may also submit the conversion plan in the same Annual Plan as the conversion assessment.

11. *HUD review of conversion plans.* This final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan. Lack of a HUD response within this time frame will constitute automatic HUD approval of the conversion plan.

V. Discussion of Public Comments Received on the July 23, 1999, Proposed Rule

The public comment period closed on September 21, 1999. By close of business on that date, HUD had received six public comments. Comments were submitted by a private citizen; a PHA; two of the three main organizations representing PHAs; and two legal aid organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the July 23, 1999, proposed rule and HUD's responses to these comments.

As noted above in this preamble, this final rule does not address the public comments received on the proposed initial assessment requirements (which were addressed as part of HUD's June 22, 2001, final rule on this subject) or on the conversion cost methodology (which is the subject of a separate proposed rule published elsewhere in today's **Federal Register**).

A. General Comments Not Related to a Specific Regulatory Section

Comment: The voluntary conversion program will not work until HUD develops an effective way to enforce Housing Quality Standards (HQS). One commenter wrote that ''[s]o long as PHAs are not enforcing HQS, [and] so long as HUD has no capability to monitor the inspection of those properties in Section 8, the [voluntary conversion] process is flawed.''

HUD Response. HUD's Section 8 Management Assessment Program (SEMAP) provides for the objective measurement of PHA performance in key areas of the Section 8 tenant-based assistance program (including PHA enforcement of HQS). SEMAP enables HUD to ensure program integrity and accountability by identifying PHA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance.

HUD's final rule for the SEMAP was published on September 10, 1998 (63 FR 48548). Most provisions of the final rule took effect on October 13, 1998. The SEMAP regulations enable HUD to assess PHA enforcement of HQS using specific criteria, and to ensure that appropriate corrective action is taken when a PHA fails to adequately enforce HQS.

Comment: Comments regarding internet cost calculator. The preamble to the proposed rule stated that HUD is considering establishing a web-based cost comparison calculator on HUD's internet homepage to assist PHAs in conducting the cost comparisons required by the proposed rule. (*See* 64 FR 40241, first column.) Two commenters supported the idea of a web-based cost calculator, writing that it would reduce the workload on PHAs and provide consistency. Another commenter, however, wrote that it is not possible to comment on the web-based calculator until additional details are provided. The commenter also suggested that the methodology used by the web-based calculator should be subject to notice and comment rulemaking procedures.

HUD Response. HUD agrees that an internet cost calculator will reduce PHA administrative burden. HUD also agrees that development of such a calculator will help to ensure the accuracy and consistency of the required cost comparisons. HUD intends to proceed with development of the web-based calculator. Short of a web-based calculator, HUD may post compilation worksheets on its Internet homepage (*http://www.hud.gov*), which will make these calculations easier.

B. Comments Regarding Conversion Assessment Components (§ 972.209 of the Proposed Rule; § 972.218 of This Final Rule)

The proposed rule at § 972.209 described the various components of a conversion assessment (the corresponding provisions of this final rule are located at § 972.218).

Comment: HUD should provide additional guidance regarding the conduct of the conversion assessment. In the preamble to the July 23, 1999, proposed rule, HUD invited public comments on ''whether additional guidance should be given regarding how PHAs should conduct the analysis of rental market conditions and the analysis of the impact on the neighborhood and how these analyses relate to the PHA's obligation to affirmatively further fair housing'' (*see* 64 FR 40242, first column).

Two commenters wrote that such guidance would be helpful. One of the commenters wrote that the templates developed for the five-year and annual PHA Plans have been a ''helpful addition to the process.'' The commenter suggested that ''[p]erhaps something similar could be developed for [the conversion assessment], and presented for public review and comment.'' The second commenter emphasized that HUD should not ''prescribe specific requirements for rental market or neighborhood impact analyses beyond those found in the statute.''

HUD Response. HUD agrees that additional guidance regarding the conduct of the conversion assessment would be helpful. Where appropriate, HUD has revised the proposed rule to provide additional clarification and guidance on the conversion assessment requirements. For example, HUD has revised the proposed rule to provide examples of the types of characteristics that may impact a family's ability to be housed. The final rule also clarifies that, in considering the success rate of using Section 8 tenant-based assistance, PHAs must consider recent success rates for units renting at or below the established payment standard. HUD may develop further non-regulatory guidance on the voluntary conversion process.

Comment: The impact analysis should include an analysis of the effect of conversion on schools and neighborhood businesses. One commenter made this suggestion.

HUD Response. This final rule requires that the conversion assessment ''describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located.'' Section 972.218(d) provides two examples of potential neighborhood impacts that should be included in the analysis: the impact on the availability of affordable housing in the neighborhood, and the impact on the concentration of poverty in the neighborhood. These examples are meant to illustrate the types of impacts on the neighborhood that must be analyzed by the PHA. The examples do not excuse a PHA from analyzing other likely impacts of the conversion, such as the impact on schools and neighborhood businesses. For purposes of clarity, HUD has revised the proposed rule to provide that the impact analysis must also include ''any other substantial impacts on the neighborhood.'' This change clarifies that a PHA may analyze the types of impacts identified by the commenter, as well as any other impacts on the neighborhood that the PHA determines are appropriate for inclusion in the required analysis.

C. Comments Regarding the Necessary Conditions for HUD Approval of Conversion (§ 972.213 of the Proposed Rule; § 972.224 of This Final Rule)

The proposed rule at § 972.213 provided that a conversion assessment is required for any PHA that seeks approval to convert a property to tenant-based assistance. The assessment must demonstrate that the conversion of the development will: (1) Not be more expensive than continuing to operate the development (or a portion of it) as public housing; (2) principally benefit the residents of the public housing development (or portion thereof) to be converted, the PHA, and the community; and (3) not adversely affect the availability of affordable housing in the community. (The corresponding provisions of this final rule are located at § 972.224.)

Comment: HUD should provide additional guidance on what it means to ''principally benefit'' residents of public housing, the PHA, and the community. Two commenters made this recommendation. One of the commenters wrote that, in determining whether conversion will principally benefit residents, HUD should consider such factors as the availability of participating Section 8 landlords, as well as access to schools, jobs, and transportation.

HUD Response. HUD agrees with the commenters and has revised the rule accordingly. Specifically, this final rule clarifies that in determining whether conversion will principally benefit public housing residents, the PHA, and the community, the PHA must consider the availability of landlords providing Section 8 tenant-based assistance and access to schools, jobs, and transportation. Further, the final rule provides that, in determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

D. Comments Regarding the Public and Resident Consultation Process for Developing a Conversion Plan (§ 972.215 of the Proposed Rule; § 972.227 of This Final Rule)

The proposed rule at § 972.215 provided that a conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development. (The corresponding provisions of this final rule are located at § 972.227.)

Comment: Final rule should expand the resident and public participation process. Two commenters recommended the expansion of the public and resident participation standards. One of the commenters objected to the language of the proposed rule, which provided that a PHA could

satisfy the resident consultation requirement by holding a meeting with the residents. The commenter wrote that ''[h]olding one meeting to present a plan that has already been developed based on complex calculations and studies * * * is not 'significant participation' in the development of the plan.'' Both commenters made various specific suggestions for enhancing the consultation process, including:

1. Requiring the PHA to consult with the development's resident council and the PHA-wide Resident Advisory Board;
2. Requiring that the required meeting with residents take place at least 45 days before the PHA submits the conversion plan to HUD;
3. Requiring that the consultation process include adequate notice to residents and an opportunity for residents to comment. Further, HUD should require that a PHA give due consideration to all comments from residents and the public;
4. Providing resident access to independent technical assistance; and
5. Requiring that any relevant documents be provided to residents at least six months in advance of the public meeting. According to the commenter making this suggestion, this is necessary due to the complexity of the issues related to voluntary conversion.

HUD Response. HUD does not believe that it is necessary to revise the proposed rule to adopt the suggestions made by these commenters. Existing regulatory requirements already ensure meaningful and timely public input in the development of the conversion plans. For example, the conversion plan must be part of the PHA's Annual Plan. The conversion plans, therefore, are subject to the extensive public participation requirements for the development of the PHA Annual Plans (*see* 24 CFR part 903). The consultation requirements at § 972.227 supplement the PHA Plan requirements, they do not replace them.

Among other requirements, the PHA Plan regulations require that PHAs establish Resident Advisory Boards to assist and make recommendations in the development of the PHA Annual Plans (*see* 24 CFR 903.13). PHAs are also required to conduct a public meeting in developing their Annual Plans, and to conduct reasonable outreach activities to encourage broad public participation in the PHA Plans (*see* 24 CFR 903.17). Considered in their totality, the consultation procedures contained in both the voluntary conversion and PHA Plan regulations require that a PHA undertake good faith efforts to ensure that residents understand and have a voice in the implementation of voluntary conversions.

For purposes of clarity, HUD has made one change to the proposed consultation requirements. Specifically, the final rule clarifies that the public housing residents with whom the PHA must meet include any duly elected resident council that covers the development in question.

Although HUD has not adopted many of the suggestions made by the commenters, HUD agrees that meaningful public and resident participation is essential to the success of the voluntary conversion process. Accordingly, in addition to requiring consultation with residents during the development of a conversion plan, this final rule also requires that PHAs consult with residents during the preparation of the conversion assessment. The conversion assessment consultation process established by this final rule is similar to the consultation process for conversion plans. The new consultation requirements will help to ensure that PHAs solicit resident input as early as possible in the conversion process.

The conversion assessment procedures at § 972.224 require that a PHA hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must explain the voluntary conversion requirements (especially as they apply to residents of affected developments), and provide draft copies of the conversion assessment to the residents. The PHA must also provide the residents with a reasonable period of time to submit comments on the draft conversion assessment. The conversion assessment submitted to HUD must contain a summary of the resident comments, as well as the PHA responses to any significant issues raised by the commenters.

Comment: The final rule should clarify that a PHA may decide not to proceed with conversion based on comments from residents and the public. Two commenters made this suggestion.

HUD Response. HUD does not believe that the requested change is necessary. This final rule requires that a PHA consider the resident comments in developing the conversion plan. A PHA may decide, based on its consideration of the comments, not to proceed with a proposed conversion. Further, HUD will also consider the public comments in its review of the conversion plan and will not approve a conversion plan unless it is satisfied that the concerns of residents and the public have been adequately addressed by the PHA.

E. Comments Regarding the Components of a Conversion Plan (§ 972.217 of the Proposed Rule; § 972.230 of This Final Rule)

The proposed rule at § 972.217 described the various elements that must be included in a conversion plan. (The corresponding provisions of this final rule are located at § 972.230.)

Comment: More notice of displacement should be required. The proposed rule would have required that a PHA notify families residing in the development 90 days before displacement. One commenter wrote that the 90-day notice is inadequate. The commenter wrote that, under the Section 8 rental voucher program, families generally have 120 days to locate housing. The commenter also wrote that, for families with school-age children, relocation during the school term will seriously disrupt the children's education and jeopardize related child-care arrangements.

HUD Response. In accordance with URA, this final rule provides that a family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, in accordance with the final rule. In addition, the final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be provided to the family at least 90 days before conversion. PHAs should consider all relevant factors that might affect a family's ability to relocate (such as school age children) in determining the appropriate time frames, and should ensure that families are provided with adequate time to locate new housing.

Comment: Reimbursement of relocation expenses should include security deposits. The proposed rule would have required that a PHA reimburse a family for ''actual and reasonable relocation expenses that [the family] incur[s] as a result of the conversion.'' One commenter suggested that the final rule explicitly provide for reimbursement of security deposits.

HUD Response. Utility and security deposits are not considered an eligible relocation cost under URA since these deposits are refundable and, therefore, not an expense. PHAs may elect to assist residents to pay any increased or additional deposits that may be required at their replacement unit by advancing funds under a repayment agreement.

HUD, however, does not believe it would be appropriate to identify by regulation all ''actual and reasonable'' relocation expenses. HUD believes that it is more appropriate to leave the definition of whether a relocation cost is ''actual and reasonable'' to the individual PHAs, who are more familiar with local circumstances and housing conditions. The final rule, therefore, clarifies that the PHA must reimburse a family for ''actual and reasonable relocation expenses, as determined by the PHA'' that the family incurs as a result of the conversion.

Comment: Relocation requirements should be split off and set forth in a separate section. One commenter made this recommendation.

HUD Response. HUD does not believe it would be reader-friendly to adopt the commenter's suggestion. It might be confusing to separate the required elements of the conversion plan into separate regulatory sections. Accordingly, the final rule continues to set forth all of the necessary components of the conversion plan, including the relocation requirements, in a single section (§ 972.230). The relocation requirements are all contained in paragraph (g) of § 972.230.

Comment: Final rule should reference applicability of URA. One commenter suggested that the final rule should provide that URA applies to families displaced pursuant to a voluntary conversion.

HUD Response. HUD has adopted the commenter's suggestion. The final rule adds a new § 972.215, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of URA and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply. Further, for purposes of clarity, HUD has revised the proposed rule to more closely conform to the notice requirements of the URA and the implementing regulations. As required by 49 CFR 24.203, if a voluntary conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

F. Comments Regarding HUD Actions With Respect to Conversion Plans (§ 972.223 of the Proposed Rule; § 972.239 of This Final Rule)

The proposed rule at § 972.223 described the standards that HUD will use to review a conversion plan submitted by a PHA, and the grounds for HUD disapproval of a conversion plan. (The corresponding provisions of this final rule are located at § 972.239.)

Comment: HUD grounds for disapproval should be expanded. Two commenters suggested that the final rule should provide additional reasons for HUD to disapprove a proposed voluntary conversion. Specifically, the commenters suggested that a conversion plan not be approved:

1. Unless converted housing is replaced on a one-for-one basis.
2. Unless the PHA has financing commitments in place for redevelopment of the housing to be converted.
3. If conversion will result in reduction in fair housing choice.
4. Unless the conversion plan is consistent with the Consolidated Plan.

HUD Response. HUD does not believe it is necessary to revise the rule to adopt the suggestions made by these commenters. The regulatory provisions regarding HUD disapproval of conversion plans are identical to the statutory language of section 22 of the 1937 Act. Section 22 provides that ''[t]he Secretary shall disapprove a conversion plan only if (1) the plan is plainly inconsistent with the conversion assessment * * *; (2) there is reliable information and data available to the Secretary that contradicts the conversion assessment; or (3) the plan otherwise fails to meet the requirements of this section.''

HUD believes that the statutory language is sufficiently flexible to permit HUD to address the concerns raised by the commenters. The PHA is already required to consider most of the issues raised by the commenter (such as the impact of the conversion on fair housing choice and the availability of replacement housing) as part of the conversion assessment process. The broad disapproval authority granted to HUD by section 22 will allow it to disapprove a conversion plan that fails to adequately address these concerns when they rise to the level contemplated by the statute.

G. Comments Regarding the Timing of Voluntary Conversion (§ 972.225 of the Proposed Rule; § 972.212 of This Final Rule)

The proposed rule at § 972.225 provided that a PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. Once a conversion plan is approved, tenants may be relocated using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance, and the PHA will be given a priority for receiving tenant-based assistance. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD might require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

Comment: HUD should not require that funding for the first year of tenant-based assistance be provided from the Capital or Operating Funds. Three commenters objected to this provision of the proposed rule. The commenters agreed that ''[t]he effect of siphoning off and further reducing public housing funds for tenant-based assistance will be the continued deterioration of public housing.'' ''[O]perating and capital funds are appropriated to ensure the preservation of public housing as an affordable housing resource and, as such, any funds attributable to developments identified for conversion should be re-invested in the public housing stock.'' One of the commenters wrote that this provision contradicts the statutory language of section 533 of QHWRA, which provides that ''the funds used by the [PHA] to provide tenant-based assistance shall be added to the annual contributions contract administered by the [PHA].''

HUD Response. HUD has not adopted the change requested by the commenter. The final rule does not mandate that the initial year of tenant-based assistance be provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this possibility. HUD continues to believe that the flexibility provided by this provision is necessary to ensure that adequate funding is available for voluntary conversions. HUD disagrees with the commenter who wrote that this provision contradicts the language of section 533 of QHWRA. The statute provides that the necessary funds will be added to the annual contributions contract only ''[t]o the extent approved by the Secretary.'' Nothing in the statutory language prohibits the use of the Operating and Capital Funds for such purposes.

Comment: HUD should provide additional guidance regarding post-conversion funding. One commenter

wrote that it would be helpful for HUD to clarify the timing of the phased process for substituting assistance and, particularly, whether local funding would be applied before or after deducting subsidy for the units being converted.

HUD Response. Converted public housing would be phased out using currently applicable procedures. Subject to appropriations, new Section 8 funding would be committed and provided to PHAs for the provision of tenant-based voucher assistance.

H. Comments on Issues Highlighted for Public Comment

Although HUD welcomed public comment on all aspects of the July 23, 1999, proposed rule, the preamble to the proposed rule specifically invited comments on the following issues (*see* 64 FR 40242, beginning on the middle column):

1. Whether the voluntary conversion process should be used to promote deconcentration; and

2. Whether a description should be required, as part of a full conversion assessment, of the proposed conversion's impact on racial and ethnic minorities and persons with disabilities.

In addition, the preamble solicited comments on a third issue regarding the cost methodology used for conversions. Specifically, HUD solicited comments on whether it is more appropriate to use a housing construction cost component of Total Development Cost (TDC) for purposes of calculating accrual. As noted above, HUD is issuing a separate proposed rule, published elsewhere in today's **Federal Register**, regarding the cost methodology. The proposed rule addresses the public comments received on whether PHA capital costs should be included as part of the cost-comparison between public housing and vouchers.

1. Comments Regarding Deconcentration

Comment: Voluntary conversion process should not be used to promote deconcentration. Two commenters opposed the use of the voluntary conversion process to promote deconcentration. The commenters wrote that promoting deconcentration is not authorized by section 533 of QHWRA and that ''conversion to Section 8 vouchers decreases the amount of needed hard units for low-income tenants.'' One of the commenters also wrote that ''PHAs across the country have successfully used the mixed finance provisions to achieve income mix and improve public housing sites.'' This commenter believes that use of the voluntary conversion process to achieve the same goals ''will only complicate and confuse the HUD approval process.''

HUD Response. After careful consideration, HUD has decided not to revise the proposed rule to specifically address the use of voluntary conversions to promote deconcentration. The rule provides PHAs with the flexibility to use the conversion process as a tool in their deconcentration efforts.

Comment: Final rule should establish safeguards if HUD decides to use conversion to promote deconcentration. One commenter suggested that if HUD decides to use conversion to promote deconcentration, it should require that, ''at the very least,'' the conversion plan specify how deconcentration will occur. Further, the commenter wrote that the conversion plan should include a ''realistic mobility project, adequate funding for the project, and monitoring to make sure that the promised deconcentration actually occurs.'' The commenter suggested that HUD impose appropriate sanctions if the promised deconcentration does not occur, including the ''withdrawal of the approval for voluntary conversion, or a cessation of the conversion process until there is a substantial measurable progress on deconcentration.''

HUD Response. HUD has not adopted the suggestions made by the commenter. As noted in the response to the previous comments, HUD has not revised the rule to specifically address the use of the voluntary conversion process to promote deconcentration.

2. Comments Regarding Fair Housing Assessment

Two commenters opposed the preparation of a fair housing impact assessment. One of the commenters noted that no such analysis is required for mandatory conversions under section 537 of QHWRA. The commenter also wrote that much of the information generated by such an analysis would already have been captured in the neighborhood impact portion of the conversion assessment. The second commenter wrote that the ''statutory requirements for public notice and consultation, along with existing housing discrimination law, sufficiently protects vulnerable groups.''

Two other commenters, however, recommended that the final rule should require the preparation of a fair housing impact analysis. The commenters wrote that HUD and PHAs have an obligation to avoid discriminatory impacts and to affirmatively further fair housing. One commenter suggested that the fair housing assessment and supporting data should be made available to the residents and the public for comment.

The commenters suggested that the fair housing analysis should:

1. Consider the impact of conversion on each protected class: racial and ethnic minorities, persons with disabilities, and families with children;

2. Consider the impact not only on current residents, but also on persons likely to apply for housing;

3. Determine whether the proposed conversion will increase fair housing choice for each protected class, or perpetuate segregation;

4. Determine whether the proposed conversion will decrease fair housing choice (according to the commenter this would generally be true if the overall amount of assisted housing is reduced or if public housing units located outside high poverty areas with concentrations of minorities are converted);

5. Analyze the rate at which minority families and other protected groups are able to find housing under the Section 8 voucher program in areas that are racially integrated and have low poverty rates;

6. Analyze whether all families in housing proposed to be converted will receive housing assistance and be able to remain in the area if they choose;

7. Analyze the need and cost for higher payment standards in non-poverty areas; and

8. Analyze the availability of participating Section 8 landlords. The commenter suggested that a PHA should be required to provide an advance list of landlords willing to participate.

HUD Response. After careful consideration, HUD has determined that the proposed rule adequately addresses fair housing considerations, and that a regulatory change is unnecessary. As part of their conversion assessments, PHAs are required to evaluate the rental market conditions for residents of the converted development, including ''any particular characteristics of the specific residents of the public housing which may affect their ability to be housed.'' This assessment should take into consideration the rental market conditions for ethnic and racial minorities and for persons with disabilities. PHAs are also required to analyze the impact of conversion on the neighborhood, which should include the potential impacts relevant to fair housing.

Further, other regulatory requirements help to ensure that PHAs consider the fair housing implications of their conversion activities. As noted above, the conversion plan must be part of the PHA's Annual Plan. HUD's PHA Plan

regulations require that a PHA certify that it will carry out its Annual Plan and 5-Year Plan in conformity with applicable statutory fair housing and nondiscrimination requirements, and must affirmatively further fair housing. This, of course, includes any voluntary conversion activities. As noted above, HUD has also added language to the final rule further emphasizing the need for adequate mobility counseling.

VI. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.218 and 972.230 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0234. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The entities that are subject to this rule are public housing agencies that administer public housing. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, this final rule establishes policies and procedures governing voluntary conversions of public housing developments to tenant-based assistance. Accordingly, to the extent that the rule imposes any economic costs on PHAs, it does so as a result of actions undertaken voluntarily by the PHAs. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 972

Grant programs—housing and community development, Low and moderate income housing, Public housing.

■ For the reasons discussed in the preamble, HUD amends title 24 of the Code of Federal Regulations, chapter IX, part 972 as follows:

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

■ 1. The authority citation for part 972 continues to read as follows:

Authority: 42 U.S.C. 1437t, 1437z, and 3535(d).

■ 2. Revise subpart B to read as follows:

Subpart B—Voluntary Conversion of Public Housing Developments

Purpose; Definition of Conversion

Sec.
972.200 Purpose.
972.203 Definition of ''conversion.''

Required Initial Assessments

972.206 Required initial assessments.

Voluntary Conversion Procedure

972.209 Procedure for voluntary conversion of public housing developments to tenant-based assistance.
972.212 Timing of voluntary conversion.
972.215 Applicability of Uniform Relocation Act.

Conversion Assessments

972.218 Conversion assessment components.
972.221 Timing of submission of conversion assessments to HUD.
972.224 Necessary conditions for HUD approval of conversion.

Conversion Plans

972.227 Public and resident consultation process for developing a conversion plan.
972.230 Conversion plan components.
972.233 Timing of submission of conversion plans to HUD.
972.236 HUD process for approving a conversion plan.
972.239 HUD actions with respect to a conversion plan.

Subpart B—Voluntary Conversion of Public Housing Developments

Purpose; Definition of Conversion

§ 972.200 Purpose.

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

(a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and

(b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

§ 972.203 Definition of ''conversion.''

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development from the site.

Required Initial Assessments

§ 972.206 Required initial assessments.

(a) *General.* A PHA must conduct a required initial assessment (which consists of the certification described in paragraph (b) of this section), in accordance with this section, once for each of its developments, unless:

(1) The development is subject to required conversion under 24 CFR part 971;

(2) The development is the subject of an application for demolition or disposition that has not been disapproved by HUD;

(3) A HOPE VI revitalization grant has been awarded for the development; or

(4) The development is designated for occupancy by the elderly and/or persons with disabilities (*i.e.*, is not a general occupancy development).

(b) *Certification procedure.* For each development, the PHA shall certify that it has:

(1) Reviewed the development's operation as public housing;

(2) Considered the implications of converting the public housing to tenant-based assistance; and

(3) Concluded that conversion of the development may be:

(i) Appropriate because removal of the development would meet the necessary conditions for voluntary conversion described in § 972.224; or

(ii) Inappropriate because removal of the development would not meet the necessary conditions for voluntary conversion described § 972.224.

(c) *Documentation.* A PHA must maintain documentation of the reasoning with respect to each required initial assessment.

(d) *Timing of submission.* Consistent with statutory submission requirements, the results of each required initial assessment (consisting of the certification described in paragraph (b) of this section) must be submitted to HUD as part of the next PHA Annual Plan after its completion.

Voluntary Conversion Procedure

§ 972.209 Procedure for voluntary conversion of public housing developments to tenant-based assistance.

A PHA that wishes to convert a public housing development to tenant-based assistance must comply with the following process:

(a) The PHA must perform a conversion assessment, in accordance with §§ 972.218–972.224 and submit it to HUD as part of the next PHA Annual Plan submission.

(b) The PHA must prepare a conversion plan, in accordance with § 972.227–972.233, and submit it to HUD, as part of its PHA Annual Plan, within one year after submitting the conversion assessment. The PHA may submit the conversion plan in the same Annual Plan as the conversion assessment.

(c) The PHA may proceed to convert the development if HUD approves the conversion plan.

§ 972.212 Timing of voluntary conversion.

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a Responsible Entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, the submitted conversion plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and Annual Contributions Contract (ACC). Units that are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.215 Applicability of the Uniform Relocation Act.

To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted under this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

Conversion Assessments

§ 972.218 Conversion assessment components.

The conversion assessment contains five elements, as described below:

(a) *Cost analysis.* A PHA must conduct a cost analysis comparing the cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. The cost methodology necessary to conduct the cost comparisons for voluntary conversions has not yet been finalized. PHAs may not undertake conversions under this subpart until the effective date of the cost methodology, which will be announced in the **Federal Register**. Once effective, the cost methodology will be codified as an appendix to this part.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent, safe, and sanitary dwelling units rented at or below the applicable Section 8 payment standard established for the jurisdiction or designated part of the FMR area in which the development is located.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes, including recent success rates for units renting at or below the established payment standard; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed (such as large household size or the presence of an elderly or disabled family member).

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This must include:

(1) The impact on the availability of affordable housing in the neighborhood;

(2) The impact on the concentration of poverty in the neighborhood; and

(3) Other substantial impacts on the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in converting the development. This must include a general description of the planned future uses of the development, and the means and timetable for accomplishing such uses.

§ 972.221 Timing of submission of conversion assessments to HUD.

(a) *Submission with PHA Plan.* A PHA that wishes to convert a public housing development to tenant-based assistance must submit a conversion assessment to HUD with its next PHA Annual Plan.

(b) *Updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

§ 972.224 Necessary conditions for HUD approval of conversion.

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development (or portion thereof) to be converted, the PHA, and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) *Relative expense.* The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) *Benefit to residents, PHA, and the community.* (i) The benefit to residents, the PHA, and the community may be demonstrated in the rental market analysis, the analysis of the impact on the neighborhood, the market value analysis, and the proposed future use of the development. In determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

(ii) In making the determination of whether a conversion would principally benefit residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing tenant-based assistance, as well as access to schools, jobs, and transportation.

(iii) To determine the benefit to residents, the PHA must hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must:

(A) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments;

(B) Provide draft copies of the conversion assessment to the residents; and

(C) Provide the residents with a reasonable period of time to submit comments on the draft conversion assessment.

(iv) The conversion assessment submitted to HUD must contain a summary of the resident comments, and the PHA responses to any significant issues raised by the commenters.

(3) *Impact on affordable housing.* The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

Conversion Plans

§ 972.227 Public and resident consultation process for developing a conversion plan.

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate state or local officials that the conversion plan is consistent with that jurisdiction's Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual Plan, a PHA must:

(1) Hold at least one meeting with the residents of the affected sites (including the duly elected Resident Council, if any, that covers the development in question) at which the PHA must:

(i) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments; and

(ii) Provide draft copies of the conversion plan to them.

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments (as well as the PHA responses to the significant issues raised by the commenters) for HUD, and consider these comments in developing the final conversion plan.

§ 972.230 Conversion plan components.

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits, and HUD approves, a conversion plan that includes a description of the future uses of the development.

(b) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(c) Include a description of how the conversion plan is consistent with the findings of the conversion assessment undertaken in accordance with § 972.218.

(d) Include a summary of the resident comments received when developing the conversion plan, and the PHA responses to the significant issues raised by the commenters (including a description of any actions taken by the PHA as a result of the comments).

(e) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(f) Summarize why the conversion assessment for the public housing project supports the three conditions necessary for conversion described in § 972.224.

(g) Include a relocation plan that incorporates all of the information identified in paragraphs (g)(1) through (g)(4) of this section. In addition, if the required conversion is subject to the URA, the relocation plan must also contain the information identified in paragraph (g)(5) of this section. The relocation plan must incorporate the following:

(1) The number of households to be relocated, by bedroom size, by the number of accessible units.

(2) The relocation resources that will be necessary, including a request for any necessary Section 8 funding and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing and budget for carrying out relocation activities.

(3) A schedule for relocation and removal of units from the public housing inventory (including the schedule for providing actual and reasonable relocation expenses, as determined by the PHA, for families displaced by the conversion).

(4) Provide for issuance of a written notice to families residing in the development in accordance with the following requirements:

(i) *Timing of notice.* If the voluntary conversion is not subject to the URA, the notice shall be provided to families at least 90 days before displacement. If the voluntary conversion is subject to the URA the written notice shall be provided to families no later than the date the conversion plan is submitted to HUD. For purposes of a voluntary conversion subject to the URA, this written notice shall constitute the General Information Notice (GIN) required by the URA.

(ii) *Contents of notice.* The written notice shall include all of the following:

(A) The development will no longer be used as public housing and that the family may be displaced as a result of the conversion;

(B) The family will be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA (if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon relocation of the family into such housing);

(C) Any necessary counseling with respect to the relocation will be provided, including any appropriate mobility counseling (the PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding);

(D) The family will be relocated to other decent, safe, sanitary, and affordable housing that is, to the maximum extent possible, housing of their choice;

(E) If the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent;

(F) Where Section 8 voucher assistance is being used for relocation, the family will be provided with the vouchers at least 90 days before displacement;

(5) *Additional information required for conversions subject to the URA.* If the voluntary conversion is subject to the URA, the written notice described in paragraph (g)(4) must also provide that:

(i) The family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing as provided in paragraph (g)(4)(ii)(B) of this section;

(ii) Any person who is an alien not lawfully present in the United States is ineligible for relocation payments or assistance under the URA, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as provided in the URA regulations at 49 CFR 24.208.

(iii) The family has a right to appeal the PHA's determination as to the family's application for relocation assistance for which the family may be eligible under this subpart and URA.

(iv) Families residing in the development will be provided with the URA Notice of Relocation Eligibility or Notice of Non-displacement (as applicable) as of the date HUD approves the conversion plan (for purposes of this subpart, the date of HUD's approval of the conversion plan shall be the ''date of initiation of negotiations'' as that term is used in URA and the implementing regulations at 49 CFR part 24).

(v) Any family that moves into the development after submission of the conversion plan to HUD will also be eligible for relocation assistance, unless the PHA issues a written move-in notice to the family prior to leasing and occupancy of the unit advising the family of the development's possible conversion, the impact of the conversion on the family, and that the family will not be eligible for relocation assistance.

§ 972.233 Timing of submission of conversion plans to HUD.

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.230, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the full conversion assessment, or as a significant amendment to that Annual Plan. The PHA may also submit the conversion plan in the same Annual Plan as the conversion assessment.

§ 972.236 HUD process for approving a conversion plan.

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's

initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan. A lack of a HUD response within this time frame will constitute automatic HUD approval of the conversion plan.

§ 972.239 HUD actions with respect to a conversion plan.

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.230; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.230.

Dated: August 11, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–23027 Filed 9–16–03; 8:45 am]

BILLING CODE 3210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR–4718–P–01]

RIN 2577–AC33

Conversion of Developments From Public Housing Stock; Methodology for Comparing Costs of Public Housing and Tenant-Based Assistance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the cost methodology that Public Housing Agencies (PHAs) must use under HUD's programs for the required and voluntary conversion of public housing developments to tenant-based assistance. Both programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The cost methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the proposed methodology, based both on public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD is issuing this new proposed rule, which will provide the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

DATES: *Comments Due Date:* November 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's Rules on Required and Voluntary Conversion of Public Housing to Tenant-Based Assistance

On July 23, 1999, HUD published for public comment two proposed rules to implement the required and voluntary conversion programs authorized by the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Pub. L. 105–276, approved October 21, 1998) (QHWRA) (see 64 FR 40232 for HUD's proposed rule on required conversion; 64 FR 40240 for the proposed rule on voluntary conversion).

The required conversion program is authorized under section 537 of QHWRA, which added a new section 33 to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). Section 33 requires Public Housing Agencies (PHAs) to annually review their public housing inventory and identify distressed developments that must be removed from the public housing inventory. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory, and convert it to tenant-based assistance.

The voluntary conversion program is authorized under section 533 of QHWRA, which amended section 22 of the 1937 Act. As amended, section 22 authorizes PHAs to voluntarily convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, principally benefits residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing.

HUD's final rules on required and voluntary conversions are published elsewhere in today's **Federal Register.** The regulations for the conversion programs will be located in a new 24 CFR part 972 (entitled ''Conversion of Public Housing to Tenant-Based Assistance''). The regulations for required conversions will be located in subpart A of new part 972. The voluntary conversion regulations will be codified in subpart B of part 972. Interested readers should consult those final rules for additional information regarding required and voluntary conversion of public housing stock to tenant-based assistance.

II. This Proposed Rule—Cost Methodology for Conversions

This proposed rule would establish the cost methodology that PHAs must use for the required and voluntary conversion of public housing developments to tenant-based assistance. Both conversion programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The methodology would be codified as an appendix to new 24 CFR part 972.

The cost methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies to required conversions). However, HUD has decided to significantly revise the proposed methodology, based both on public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD is issuing this new proposed rule, which will provide the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons. HUD plans to publish this rule as final prior to the effective date for the required and voluntary conversion rules, published in final elsewhere in this **Federal Register.**

III. Significant Changes to Proposed Cost Methodology

The most significant differences between the cost methodology contained in the July 23, 1999, proposed rule on voluntary conversions and this proposed rule are as follows:

1. *Use of OMB Circular A–94.* This proposed rule provides for use of OMB Circular A–94 (Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs) in performing the

discounting required for the cost comparisons. The OMB circular provides guidance on the discount rates to be used in evaluating federal programs whose benefits and costs are distributed over time. HUD believes that adoption of the policies and procedures outlined in OMB Circular A–94 will result in more accurate comparisons of the cost of tenant-based assistance with the costs of continuing to operate developments as public housing. Application of these procedures will also ensure that the approach used for the cost comparison is consistent with the way other federal programs and policies are evaluated. A copy of OMB Circular A–94 may be downloaded from the following Internet Web site: *http://www.whitehouse.gov/omb/circular/a094/a094.html.*

2. *Discounting of public housing operating subsidy and Section 8 voucher costs.* Consistent with OMB Circular A–94, the proposed cost methodology compares the net present value of the stream of costs associated with continued use as public housing with the net present value of the stream of costs associated with vouchers. The period over which costs, both initial and ongoing, are recognized is generally 20 years, but may be a longer period (30 years for new construction) or a shorter period (15 years) under voluntary conversion. Costs are discounted using the real discount rate provided on the OMB Web site at *http://www.whitehouse.gov/OMB/Budget.*

The methodology contained in this proposed rule replaces the approach used in the July 23, 1999, proposed rule on voluntary and required conversions in which public housing and voucher costs were converted to a single-period cost (per unit per month average) by amortizing initial and ongoing modernization costs.

3. *Use of revitalization plan in conduct of cost test.* This proposed rule revises the proposed cost methodology to clarify that, particularly for voluntary conversion, the required cost comparison will not always be based on a revitalization plan.

4. *Calculation of accrual.* The proposed cost methodology has been revised to provide that accrual will be calculated using the portion of the latest published HUD unit Total Development Cost (TDC) limits for the area that HUD attributes to the costs of housing construction. In addition, the amortization period has been changed so that the amounts used for accrual are consistent with the amounts estimated in the HUD-sponsored comprehensive study of public housing capital needs released in 2000.

5. *Additional costs of providing tenant-based assistance.* HUD has clarified the proposed cost methodology to provide that a PHA must consider the following expenses as part of the cost of providing Section 8 tenant-based assistance:

- The cost of addressing environmental concerns related to demolition; and
- An amount equal to $1,000 (or a higher amount allowed by HUD) for relocation assistance costs (including counseling).

6. *Use of payment standard in calculating cost of providing tenant-based assistance.* HUD has revised the proposed cost methodology to provide that, for purposes of the required cost comparison, the PHA should use the higher of the average cost for voucher units occupied by recent movers, or the applicable Section 8 payment standard for the jurisdiction or designated part of the Fair Market Rent (FMR) area. The term cost as used here means the gross rent of the units (contract rent plus any utility allowance). PHAs have discretion in defining a reasonable time period for measuring recent mover costs.

IV. Discussion of Public Comments on Proposed Cost Methodology

As noted above in this preamble, the cost methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions. The comment period on the proposed rule closed on September 21, 1999. By close of business on this date, HUD had received six public comments. Comments were submitted by a private citizen, one PHA, two of the three main organizations representing PHAs, and two legal aid organizations. Several of the commenters raised issues concerning the proposed cost methodology. This section of the preamble presents a summary of the significant issues raised by the public commenters on the proposed methodology, and HUD's responses to these comments.

Comment: The proposed cost methodology incorrectly applies cost methodologies developed to deal with distressed housing to non-distressed housing. Two commenters recommended that the cost test not be based on the preparation of a revitalization plan. One of the commenters wrote that PHAs wishing to convert may not always have a completed revitalization plan to serve as the basis for the required cost analysis. The other commenter wrote that the proposed cost methodology incorrectly assumes that the projects to be converted are distressed projects that need to be revitalized. This commenter wrote that ''any project, including viable projects and projects in good condition, are subject to voluntary conversion.'' The commenter worried that requiring the inclusion of revitalization expenses in the cost methodology would drive up the cost of operating public housing and, thus, increase the likelihood that a development will fail the cost test.

HUD response. HUD has revised the language of the July 23, 1999, proposed rule to be more sensitive to the concerns expressed by the commenters, and to the reality that the renovations needed so that public housing will be usable over its remaining useful life, as contemplated by section 22 of the 1937 Act, will sometimes be less extensive than a revitalization plan.

Comment: Additional costs of providing tenant-based assistance. Section III of the proposed methodology describes the procedures for determining the cost of providing Section 8 tenant-based assistance. One commenter suggested that this section be revised to include the following expenses:

1. Any costs related to dealing with the environmental aspects of demolition;
2. The costs of the various studies required to establish grounds for conversion; and
3. The costs of a strong mobility project. According to the commenter this is necessary to affirmatively further fair housing.

HUD Response. HUD agrees that the cost of providing tenant-based assistance must include expenses incurred to address environmental concerns related to demolition, and has clarified the cost methodology accordingly. HUD has also revised the cost methodology to require the inclusion of $1,000 (or a higher amount allowed by HUD) for relocation assistance, including counseling.

HUD does not agree that the costs of the required studies should be included in the cost of providing tenant-based assistance. These studies are conducted to determine whether conversion is permissible. Accordingly, the costs of the studies are incurred before the commencement of the conversion process and cannot appropriately be considered as expenses related to the provision of tenant-based assistance.

Comment: Section 8 cost calculation should require PHAs to consider alternatives to the FMR. One commenter wrote that Section III of the proposed cost methodology incorrectly requires PHAs to focus on FMRs in determining the cost of providing tenant-based assistance. The commenter wrote that

the ''FMRs may not be fair.'' The commenter suggested that PHAs be required to consider ''submarket rents,'' exception rents, waivers of the FMRs, and payment standards above the FMRs, which would increase the cost of providing Section 8 tenant-based assistance.

HUD Response. In response to this comment, HUD has revised the cost methodology to provide that, for purposes of the required cost comparison, the PHA should use the higher of the average cost (gross rent) for voucher units occupied by recent movers, or the applicable Section 8 payment standard for the jurisdiction or designated part of the FMR area.

Comments regarding PHA capital costs as part of the cost-comparison between public housing and vouchers. One commenter wrote that a revised method of calculating accrual costs would be appropriate. Specifically, the commenter wrote that it would be more appropriate and customary to calculate accrual based on the hard costs of construction, or revitalization, rather than the total project cost.

HUD Response. HUD has amended the proposed methodology to address the concerns raised by the commenter. Specifically, the cost methodology has been revised to provide that accrual will be calculated using the portion of the latest published HUD unit TDC limits for the area that HUD attributes to the costs of housing construction. In addition, the amortization period has been changed so that the amounts used for accrual are consistent with the amounts estimated in the HUD-sponsored comprehensive study of public housing capital needs released in 2000.

Comment: Comments regarding internet cost calculator. The preamble to the July 23, 1999, proposed rules stated that HUD is considering establishing a web-based cost comparison calculator on HUD's internet homepage to assist PHAs in conducting the cost comparisons required by the proposed rule. (*See* 64 FR 40232, third column; and 64 FR 40241, first column.) Three commenters supported the idea of a web-based cost calculator, writing that it would reduce the workload on PHAs and provide consistency. Another commenter, however, wrote that it is not possible to comment on the web-based calculator until additional details are provided. The commenter also suggested that the methodology used by the web-based calculator should be subject to notice and comment rulemaking procedures.

HUD Response. HUD agrees that an internet cost calculator will reduce PHA administrative burden. HUD also agrees that such a calculator will help to ensure the accuracy and consistency of the required cost comparisons. To assist PHAs in completing the required calculations, HUD has developed a spreadsheet calculator that will be available for PHAs to download from the HUD Homepage (*http://www.hud.gov*). The spreadsheet calculator is designed to walk housing agencies through the calculations and comparisons laid out in this proposed rule and allows PHAs to enter relevant data for their PHA and the development being assessed. Results, including net present values, are generated based on these PHA data. Sample pages from the spreadsheet calculator are provided as a part of this proposed rule, showing data for the example used here to illustrate the cost comparison methodology.

V. Issue Highlighted For Public Comment

HUD is seeking comment on whether net proceeds from the sale or lease of a property should be included in the cost test calculation for conversion in cases where a property is determined to have significant market value for an alternative use. In the current proposed rule, voucher costs include annual voucher and administrative costs and demolition and relocation costs. HUD is considering whether to include these net proceeds, which would offset the cost of vouchers.

VI. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. Most PHAs with developments large enough to be subject to required conversion are located in larger political jurisdictions. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on larger troubled agencies. For all other PHAs, conversion would be undertaken on a voluntary basis.

(2) *No Significant Economic Impact.* The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Environmental Impact

This proposed rule involves external administrative or fiscal requirements or procedures that relate to the discretionary establishment of cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt

state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.850.

List of Subjects in 24 CFR Part 972

Grant programs—Housing and community development, Low and moderate income housing, Public housing.

For the reasons discussed in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

1. The authority citation for 24 CFR part 972 continues to read as follows:

Authority: 42 U.S.C. 1437t, 1437z–5, and 3535(d).

2. Add an appendix to part 972 to read as follows:

Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

I. Public Housing-Net Present Value

The costs used for public housing shall be those necessary to produce a viable development for its projected useful life. The estimated cost for the continued operation of the development as public housing shall be calculated as the sum of total operating cost, modernization cost, and costs to address accrual needs. Costs will be calculated at the property level on an annual basis covering a period of 20 years (or an alternative period as discussed in paragraphs I.B. and I.E. below). All costs expected to occur in future years will be discounted, using an OMB-specified real discount rate provided on the OMB Web site at *http://www.whitehouse.gov/OMB/Budget,* for each year after the initial year. The sum of the discounted values for each year (net present value) for public housing will then be compared to the net present value of the stream of costs associated with housing vouchers.

Applicable information on discount rates may be found in Appendix C of OMB Circular A–94, ''Guidelines and Discount Rates for Benefit Cost Analysis of Federal Programs'' which is updated annually, and may be found on OMB's Web site at *http://www.whitehouse.gov/OMB.* All cost adjustments conducted pursuant to this cost methodology must be performed using the real discount rates provided on the OMB Web site at *http://www.whitehouse.gov/OMB/Budget.* HUD will also provide information on current rates, along with guidance and instructions for completing the cost comparisons on the HUD Homepage (*http://www.hud.gov*). The Homepage will also include a downloadable spreadsheet calculator that HUD has developed to assist PHAs in completing the assessments. The spreadsheet calculator is designed to walk housing agencies through the calculations and comparisons laid out in this proposed rule and allows housing agencies to enter relevant data for their PHA and the development being assessed. Results, including net present values, are generated based on these housing agency data. (Note that sample pages from the spreadsheet calculator are provided as a part of this proposed rule, showing data for the example used here to illustrate the cost comparison methodology.

A. Operating Costs

1. Any proposed revitalization or modernization plan must indicate how unusually high current operating expenses (e.g, security, supportive services, maintenance, tenant and PHA-paid utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix, and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized or modernized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration, and management structure of the revitalized or modernized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized or modernized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (P.I.L.O.T.) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per year. For example, if a development will have 375 units occupied by households and will have $112,500 monthly non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and $37,500 monthly utility costs paid by the PHA, and $18,750 in monthly utility allowances that are deducted from tenant rental payments to the PHA because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost is $168,750 (or $450 per unit per month) and its annual operating cost would be $2,025,000 ($450 times 12 months times 375 units). Operating costs are assumed to begin in the initial year of the 20-year (or alternative period) calculation and will be incurred in each year thereafter.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood, and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized or modernized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized or modernized development are plausible, when the projected initial year per-unit operating cost of the renovated development is lower than the current per unit cost by more than 10 percent, then the plan should detail how the revitalized development will achieve this reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than 20 percent, then the development-based method will be used to determine projected costs. The current costs will be divided by the sum of all occupied units and vacant units fully funded under the Performance Funding System (PFS) plus 50 percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are $2,250,000 and it has 325 occupied units and 50 vacant units not fully funded under PFS (or a 13 percent overall vacancy rate), then the $2,250,000 is divided by 350—325 plus 50 percent of 50—to give a per unit figure of $536 per unit month. By this example, the current costs of $536 per occupied unit are at least 10 percent higher (19 percent in this example) than the projected costs per occupied unit of $450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of 20 percent or higher, then the PHA-wide method will be used to determine projected costs. First, the current per unit cost of the entire PHA will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus 50 percent of all vacant units not fully funded under PFS. For example, if the PHA's operating cost is $18 million, and the PHA has 4,000 units, of which 3,800 are occupied and 200 are vacant and not fully funded under PFS, then the PHA's vacancy adjusted operating cost is $385 per unit per month—$18,000,000 divided by the 3,900 (the sum of 3,800 occupied units and 50 percent of 200 vacant units) divided by 12 months. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the PHA. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with 375 occupied units had in occupancy 200 two-bedroom units, 150 three-bedroom units, and 25 four-bedroom units, then its bedroom adjustment factor would be 1.127—200 times 1.0, plus 150 times 1.25, plus 25 times 1.4 with the sum divided by 375. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the PHA and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the PHA had a total monthly operating cost per unit of $385 and a bedroom adjustment factor of .928, and suppose that the development had a bedroom adjustment factor of 1.127. Then, the development's estimated current monthly operating cost per occupied unit would be $467—or $385 times 1.214 (the ratio of 1.127 to .928). By this example, the development's current operating costs of $467 per unit per month are not more than 10 percent higher (3.8 percent in this example) than the projected costs of $450 per unit per month and no additional justification of the cost reduction would be required.

B. Modernization

Except for some voluntary conversion situations as explained in paragraph E. below, the cost of modernization is the initial revitalization cost to meet viability standards. (For purposes of this cost methodology, the term ''viability standards'' refers to new housing construction or rehabilitation that meets local housing codes. In the absence of a local code, PHAs shall refer to the Public Housing Modernization Standards Handbook (Handbook 7485.2) or the International Existing Building Code (ICC) 2003 Edition.) Costs may include costs for demolition and modernization (where the latter also includes the costs, if any, of relocating tenants during the modernization period). Any proposed demolition should be assumed to occur during the initial year of the 20-year (or alternative) period. Modernization costs may be assumed to occur during years 1 through 4, consistent with the level of work proposed and the PHA's proposed modernization schedule. For example, if the initial modernization outlay to meet viability standards is $21,000,000 for 375 units, and there is no demolition involved, a PHA might incur costs in three equal increments of $7,000,000 in years two, three, and four (based on the PHA's phased modernization plan). In comparing the net present value of public housing to voucher costs for required conversion, a 20-year period will normally be used. However, when revitalization would be equivalent to new construction, the PHA must compare costs over a 30-year period.

C. Accrual

The cost of accrual (*i.e.*, replacement needs) will be estimated by using the portion of the latest published HUD unit total development cost limits for the area that HUD attributes to housing construction costs (HCC), and applying it to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per unit cost of modernization, then multiplying that figure by .025 (representing a 40-year replacement cycle). For example, if the development will remain a walkup structure containing 200 two-bedroom, 150 three-bedroom, and 25 four-bedroom occupied units, and if HUD's HCC limit for the area is $50,000 for two-bedroom walkup structures, $70,000 for three-bedroom walkup structures, and $80,000 for four-bedroom walkup structures, and if the per unit cost of the modernization is $56,000, then the estimated annual cost of accrual per occupied unit is $800. This is the result of multiplying the value of $32,000 (the cost guideline value of $60,000 minus half the modernization value of $56,000) by .025. The first year of accrual for the development is $300,000 ($800 times 375 units) and should be assumed to begin in the year after modernization is complete. Accrual—like operating cost—is an annual expense and will occur in each year over the 20-year (or alternate) period.

D. Overall Cost

1. The overall cost for continuing to operate the development as public housing is the net present value of the stream of 20-year projected costs, including annual post-revitalization operating costs, modernization costs in the years these costs are assumed to occur, and estimated annual accrual costs. In calculating net present value, the sum of all costs in each future year is discounted back to the current year using the OMB-specified real discount rate. The real discount rate is already adjusted to take into account the effects of inflation.

2. For example, if the sum of costs in year 20 is $2,325,000, and the real discount rate is 2.8 percent per year, the discounted cost is $1,363,143. This is obtained by multiplying the year 20 costs by the discount factor for year 20. The discount factor for year 20 is derived by dividing 1 by (1 + 0.0285) raised to the 19th power, *i.e.*, $1/(1+0.0285)^{19}$. The discount factor for year 19 would be $1/(1 + 0.0285)^{18}$ and so on. The sum of the discounted costs for 20 years is the net present value to be compared to the net present value of voucher costs. The comparison should be expressed on a per unit per month basis.

3. To assist PHAs in completing the net present value comparison, and to ensure consistency in the calculations, HUD has developed a spreadsheet calculator (described above) that is available for downloading from the HUD Homepage. Sample pages from the spreadsheet calculator are provided as a part of this proposed rule, showing data for the example used here to illustrate the cost comparison methodology. Using PHA data and property specific inputs (to be entered by the housing agency), the spreadsheet will discount costs as described above and will generate net present values for the time period specified by the PHA depending on the scenario being tested.

E. Adjustment for Shorter Remaining Useful Life (Used Only for Voluntary Conversion—See Subpart B of This Part)

Where a PHA demonstrates that it is reasonable to use a remaining useful life of 15 years rather than 20 or 30 years, the PHA will calculate the net present value of public housing costs over this shorter period and compare such costs to the net present value of voucher costs over the same number of years. The use of a shorter time period is limited to those developments being assessed for voluntary conversion. Under required conversion, a longer period (20 or 30 years, depending on the extent of revitalization) is applied because the focus is on the developments' long-term viability and the public housing phase-out period itself may extend up to five years (or ten years, by exception).

II. Public Housing—New Budget Authority (Used Only for Voluntary Conversion—See Subpart B of This Part)

This cost analysis shall be conducted in a manner similar to the net present value analysis, except that costs will not be discounted. In this case, costs will be inflated for each future year, and the sum of the undiscounted costs will be compared. This second comparison carries out the language of the statute and reflects the appropriation of funding needed to carry out the proposed actions.

III. Tenant-Based Assistance

A. The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly costs based on the higher of the average gross rent for voucher units occupied by recent movers, or the applicable Section 8 payment standard for the jurisdiction or designated part of the FMR area; plus the most recent administrative fee applicable to the units (depending on housing choice voucher program size) as published by HUD for the year used for calculating public

housing operating costs; plus the cost of demolishing the occupied public housing units (including the cost of any necessary environmental remediation); plus $1,000 per unit (or a higher amount allowed by HUD) for relocation assistance costs, including counseling. However, if the sum of the estimated per unit cost of demolition, remediation, and relocation exceeds 10 percent of the average Total Development Cost (TDC) for the units, the lower of the PHA estimate or a figure based on 10 percent of TDC must be used.

B. For example, if the development has 200 occupied two-bedroom units, 150 occupied three-bedroom units, and 25 occupied four-bedroom units, and if the cost (gross rent) for voucher units occupied by recent movers is $550 for two-bedroom units, $650 for three-bedroom units, and $750 for four-bedroom units, and if the administrative fee comes to $46 per unit, then annual voucher and administrative costs are $2,922,000—the unit weighted average of the costs of $603.33 (the sum of 200 times $550, plus 150 times $650, plus 25 times $750, divided by 375 units) plus $46 in monthly per unit administrative fee, times 375 units times 12 months. To this the PHA adds the costs of demolition, remediation, and $1,000 per unit for relocation, including counseling (unless a higher amount is approved by HUD). For example, assume that the cost of demolishing 375 occupied units is $1,875,000 ($5,000 per unit), remediation is $375,000 ($1,000 per unit), and relocation costs are $375,000 (based on $1,000 per unit) for a total of $7,000 per unit. This figure is then compared to 10 percent of the average per unit TDC for the development. For example if the TDC limits are $88,000 for a two-bedroom unit, $123,000 for a three-bedroom unit, and $140,000 for a four-bedroom unit, the average TDC is $105,470 (200 times $88,000, plus 150 times $123,000, plus 25 times $140,000, divided by 375) and 10 percent of TDC is $10,547. In this example, the estimated cost of the items (per unit) is less than 10 percent of TDC for the development, and the PHA estimate of $7,000 is used. If estimated expenses had exceeded 10 percent of TDC ($10,547 in this example), expenses must be capped at the lower amount.

C. Voucher and administrative costs occur annually. Costs associated with demolition, remediation, and relocation are assumed to occur in year 1. The net present value of the stream of costs is obtained by applying the OMB-specified real discount rate to the sum of the costs in each year for the 20-year (or alternative) period. For example, if the costs in year 20 are $2,922,000 and the discount factor is 2.85 percent per year, the discounted cost in year 20 would be $1,713,163 ($2,922,000 times the discount factor in the twentieth year). The discount factor for year 20 is derived by dividing 1 by $(1 + 0.0285)^{19}$. The discount factor for year 19 would be $1/(1 + 0.0285)^{18}$ and so on. (As noted above, HUD has developed a spreadsheet calculator—available for download from the HUD Homepage—that will perform these computations based on PHA-provided inputs.)

IV. Results

A. In voluntary conversion, this Section 8 cost would then be compared to the cost of the public housing development, both in terms of net present value and new budget authority. In the example of this section, the public housing cost (net present value) of $609 monthly per occupied unit exceeds the Section 8 cost of $533 monthly per occupied unit. In addition, the monthly per unit cost of public housing based on New Budget Authority ($840) exceeds the cost of vouchers based on New Budget Authority ($799). Therefore, the PHA would have the option of preparing a conversion plan for the development under subpart B of this part.

B. In required conversion, the Section 8 cost would be compared with the cost of the revitalized public housing development on a net present value basis. In the example in this section, the revitalized public housing cost on a net present value basis of $609 per unit month would exceed the Section 8 cost of $533 monthly per occupied unit. Therefore, the PHA would be required to convert the development under the requirements of subpart A of this part.

V. Detailing the Public Housing and Section-8 Cost Comparison: A Summary Table

This section summarizes the Section 8 cost comparison methods using the example provided. Sample pages from HUD's spreadsheet calculator are also reproduced, showing inputs and results for the example.

A. Key Data, Development

The revitalized development has 375 occupied units. All of the units are in walkup buildings. The 375 occupied units will consist of 200 two-bedroom units, 150 three-bedroom units, and 25 four-bedroom units. The total current operating costs attributable to the development are $112,500 per month in non-utility costs, $37,500 in utility costs paid by the PHA, and $18,750 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is $21,000,000, or $56,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition (including remediation) and relocation of the 375 occupied units is $2,625,000, or $7,000 per unit, based on recent experience.

B. Key Data, Other

The housing construction cost limit, a component of the TDC, is $50,000 for two-bedroom walkups, $70,000 for three-bedroom walkups, and $80,000 for four-bedroom walkups. TDC units for the same sized units in this area are $88,000, $123,000, and $140,000 respectively. The voucher cost for a two-bedroom unit (based on recent movers) is $550, the cost of a three-bedroom unit is $650, and the cost of a four-bedroom unit is $750. The applicable monthly administrative fee amount, in the most recent **Federal Register** Notice, is $46 per unit per month. The real discount rate is 2.85 percent.

C. Calculation of Public Housing Costs (Net Present Value)

1. Operating Cost—$2,025,000: This is the annual cost of operating 375 units based on the information above. Costs are assumed to begin in year 1 of the period and occur in each subsequent year.

2. Modernization Cost (Including Any Necessary Relocation)—$21,000,000: This is the estimated cost of modernization for 375 units. Costs are assumed to occur in equal amounts in years 2, 3, and 4.

3. Estimated Accrual Cost—$300,000: Accrual is estimated as the per-unit average housing construction cost minus half of the modernization cost per unit, times .025, times the number of units (in this example, $32,000 times .025 times 375). Accrual begins in the first year after modernization. Accrual costs are incurred annually.

4. Net Present Value per Unit per Month of Public Housing Costs—$609: This figure is obtained by summing the values described above in each year and discounting each year to the present using the OMB-specified real discount rate assuming a 20-year period. Net Present Values should be expressed on a per unit per month basis.

D. Current Costs of Section 8 (Net Present Value)

1. Annual Voucher and Administrative Costs—$2,922,000—(based on the unit-weighted average of the costs for voucher units occupied by recent movers): In this example, 200 times $550, plus 150 times $650, plus 25 times $750, divided by 375 plus the administrative fee of $46 per unit per month times 375 units times 12 months. Costs are assumed to start in year 1 and occur in each year thereafter.

2. Demolition and Relocation Cost—$2,625,000 ($7,000 per unit times 375 units): All costs are assumed to occur in year 1.

3. Net Present Value Per Unit Per Month of Voucher Costs—$533: This figure is obtained by summing the values described above in each year and discounting each year to the present using the OMB-specified real discount rate, assuming a 20-year period. Net Present Values should be expressed in dollars per unit per month.

E. Monthly Per Unit Costs of Public Housing and Vouchers Based on New Budget Authority

The New Budget Authority method produces a monthly per unit cost of $840 for public housing and $799 for vouchers. These figures are obtained using the same initial assumptions as for the net present value comparison. In this case, however, the comparison is based on the sum of the undiscounted (but inflated) costs for public housing and vouchers over a period of 20 years.

F. Result

In this example, public housing costs exceed voucher costs on a net present value basis and on the basis of new budget authority. Therefore, a conversion plan would be permissible under voluntary conversion, subpart B of this part. Under required conversion, because revitalized public housing costs on a net present value basis exceed section 8 costs, the PHA would be required to convert the public housing development under subpart A of this part.

Dated: August 11, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

Attachment—Sample Pages From Spreadsheet Calculator

Note: The following sample pages will not be codified in the Code of Federal Regulations.

As noted above in the preamble to this proposed rule, HUD has developed a spreadsheet calculator to assist PHAs in the calculations and comparisons required for the conversion analysis. The spreadsheet calculator will be available for PHAs to download from the HUD Homepage (*http://www.hud.gov*). The following sample pages from the spreadsheet calculator illustrate the cost comparison methodology contained in this proposed rule.

BILLING CODE 4210–33–P

Cost Comparison Spreadsheet
Voluntary and Required Conversions under 24 CFR Part 972

This spreadsheet is provided as a tool for public housing agencies conducting cost comparisons pursuant to 24 CFR Part 972, "Conversions of Public Housing to Tenant Based Assistance." The spreadsheet assists PHAs in comparing public housing costs to voucher costs using the methodology presented in the appendix to 24 CFR 972 for both Required Conversions (subpart A) and Voluntary Conversions (subpart B).

Spreadsheet cells shaded in green allow PHAs to enter information on the subject property's operating, modernization, and accrual costs, as well as information on voucher costs. Use the arrow keys to move from one cell to another. Enter numbers without commas and press "Enter" when you are done with each cell. Enter data only in the cells you need. Green cells may be left blank (you do not need to enter zeros). Where green cells show "NA" the item is not applicable and should be skipped. Cells shaded yellow contain formulas and cannot be changed.

The spreadsheet consists of seven tabs, including this introduction. To move from tab to tab, click on the tab name at the bottom of the screen.

Tab 2 -- Public Housing Operating Cost. At this tab, the PHA enters the projected operating costs for the revitalized property and also checks these costs for reasonableness by comparing them to current operating costs, using either the Development or the PHA-wide method.

Tab 3 -- Public Housing Capital Cost. At this tab, the PHA enters the anticipated costs of revitalization/modernization, relocation, and demolition (if any) and indicates the year in which costs are expected to be incurred based on the PHA's modernization plan. Up to four years are permitted for this activity. PHAs will also enter data needed to estimate ongoing accrual costs for the property.

Tab 4 -- Voucher Cost. At this tab, the PHA enters the average voucher cost and administrative fee in order to calculate annual Housing Choice Voucher (HCV) costs. PHAs will also estimate demolition, remediation, and relocation costs associated with the conversion (and test these against 10% of TDC).

Tab 5 -- Cost Comparison. At this tab, the PHA enters key assumptions, including current OMB-specified discount rates and the number of years for the comparison (15,20 or 30) depending on the type of conversion (voluntary or required). Summary numbers are then presented from the previous tabs (e.g., first year operating cost, capital costs incurred in years 1 to 4, initial accrual, and voucher and demolition costs). Finally, the net present value of the costs is compared for Public Housing and for Vouchers.

Tab 6 – Net Present Value Calculation. This tab shows the costs of each line item in each year as well as the discounted totals for public housing and vouchers. The discounted totals are summed for the relevant period (15, 20 or 30 years) to create the cost comparison results at TAB 5.

Tab 7 – New Budget Authority. This tab shows the costs of each line item in each year, including the effects of inflation. The inflated costs are summed for the relevant period (15, 20 or 30 years) to create the cost comparison results at TAB 5.

Public Housing Operating Cost

Calculation of Projected Operating Cost for the Revitalized Development

Enter the PHA's projected monthly costs for operating the development after revitalization or modernization in the green cells below. This estimate should reflect the costs of operating comparable developments and must be reasonable in light of the revitalization/modernization plan proposed.

a. Non-utility costs (including pro-rated share of overhead costs)	$112,500
Utilities	$37,500
Utility Allowances	$18,750
Total Projected Monthly Operating Costs for Revitalized Development	$168,750
b. Total Number of Units in Revitalized Development	375
c. Projected Monthly Operating Costs Per Unit	$450
d. Total Projected Annual Operating Costs	$2,025,000

Reasonableness Tests

Projected operating costs must be shown to be resonable. This test compares projected monthly per-unit costs (above) with the current operating costs of the property. If projected costs are more than 10% lower than current costs, a narrative description must be provided detailing now this reduction in costs will be achieved. Current operating costs are calculated using either the development-based method or the PHA-wide method. If the development has a current vacancy rate of less than 20% and there is reliable development-level data on operating costs, use the develelopment-based method (A). If the development has a current vacancy rate of 20% or greater or there is no reliable development-level data available, use the PHA-wide method (B).

What is the current vacancy rate of the development?	Enter vacancy rate here:	20%
Is there reliable development based data available?	Enter Yes or No here:	NO
Method to be used:	Use PHA-Wide Method	

2A. Development-Based Method

A1 Total Current Operating Cost for the Development $2,250,000

A2 Calculation of Vacancy-Adjusted Units for the Property (Enter the number of units of each type.)

Occupancy Adjustment	Property Units - Current	
	Units	Adjusted
# of Occupied units (x1)	325	325
# of Vacant Fully Funded (x1)		
# of Long-Term Vacant (x0.5)	50	25
Total	375	350

350

A3 Current Operating Costs Per Unit Per Month (PUM) ((A1/A2)/12) $536

2B. PHA-Wide Method

B1 Total Current Operating Cost for the Agency $18,000,000

B2 Calculation of Vacancy-Adjusted Units for the PHA (Enter the number of units of each type.)

Occupancy Adjustment	PHA Units	
	Units	Adjusted
# of Occupied units (x1)	3,800	3,800
# of Vacant Fully Funded (x1)		0
# of Long-Term Vacant (x0.5)	200	100
Total	4,000	3,900

$3,900

B3 Current Operating Costs Per Unit Per Month (PUM) ((B1/B2)/12) $385

B4 Calculation of Bedroom Adjustment Factor (Enter the number of units of each type.)

Bedroom		PHA Units		Property Units - Current	
Adjustment		Units	Unit Cost Factor	Units	Unit Cost Factor
0 BR	0.7	500	350		0
1 BR	0.85	1400	1,190		0
2 BR	1	1600	1,600	200	200
3 BR	1.25	225	281	150	188
4 BR	1.4	75	105	25	35
5 BR	1.61		0		0
6 BR	1.82		0		0
Total		3800	3,526	375	423
Adjustment Factors		x	0.928	y	1.127

B5 Overall Bedroom Adjustment Factor (y/x) 1.214

B6 Current Monthly Operating Cost per Unit (B3*B5) $467

3. Comparison of Projected and Current Operating Costs (and Justification)

Projected Operating Costs (from Section 1)		$450
Current Operating Cost	Using PHA-Wide Method	$467
Percent difference		3.8%

If current costs exceed the PHA's projection by more than 10 percent, the PHA must justify the use of the lower amount in the space below.

NA

Public Housing Capital Cost

1 Initial Capital Costs (Enter costs over a maximum of four years.)

		Year1	Year 2	Year 3	Year 4	Year 5	Total
a	Demolition Cost						
b	Modernization Cost		$7,000,000	$7,000,000	$7,000,000	NA	
c.	Relocation Cost					NA	
d.	Total Initial Capital Cost	$0	$7,000,000	$7,000,000	$7,000,000	NA	$21,000,000
e.	Total Number of Units in Revitalized Development						375
f.	Capital Cost per Unit						$56,000

2 Accrual (Enter the applicable HCC limits below, along with the bedroom distribution for the revitalized development.)

	Detached/Semi-Detached		Row House		Walkup		Elevator	
	# of Units	HCC Limit	# of Units	HCC Limit	# of Units	HCC Limit	# of Units	HCC Limit
0BR								
1BR								
2BR					200	$50,000		
3BR					150	$70,000		
4BR					25	$80,000		
5BR								
	0	$0	0	$0	375	$22,500,000	0	$0

a	HCC, per unit average	$60,000
b	Total Number of Units in Revitalized Development	375
c	50% of Capital Cost per Unit	$28,000
d	Adjusted HCC (HCC (a) minus 50% of Capital Cost per Unit (c))	$32,000
e	Annual per Unit Accrual for 40 Year Replacement Cycle (Adjusted ACC (d) x 0.025)	$800
f	Annual Accrual after Modification (e x b)	$300,000

		Year 1	Year 2	Year 3	Year 4	Year 5
g	Annual Accrual	0	0	$0	$0	$300,000

(Accrual begins in the year after modernization is complete.)

Voucher Cost

Voucher Cost

Enter the number of units in the revitalized development by bedroom size and corresponding voucher costs per month.

Unit Size Post Revitalization	a # of Units	b Voucher Costs	c Units X Cost
0BR	0		$0
1BR	0		$0
2BR	200	$550	$110,000
3BR	150	$650	$97,500
4BR	25	$750	$18,750
5BR	0		$0
	375		$226,250

d	Monthly Voucher Cost Per Unit (c / a)	$603
e	Monthly Section 8 Administrative Fee (per unit)	$46
f	Annual Voucher and Administrative Costs	$2,922,000
g	Per Unit Demolition Cost	$5,000
h	Per Unit Remediation Cost (if not in demo cost)	$1,000
i	Per Unit Relocation Costs ($1,00 per unit)	$1,000
j	Total Per Unit Demolition Cost, Remediation, and Relocation Costs	$7,000

The sum of demolition, remediation and relocation cost per unit must not exceed 10% of the average TDC for the revitalized development. Enter TDC limits for each structure type and bedroom category below. The unit count is taken from the HCC table used for accrual.

	Detached/Semi-Detached		Row House		Walkup		Elevator	
	# of Units	TDC Limit	# of Units	TDC Limit	# of Units	TDC Limit	# of Units	TDC Limit
0BR	0		0		0		0	
1BR	0		0		0		0	
2BR	0		0		200	$88,000	0	
3BR	0		0		150	$123,000	0	
4BR	0		0		25	$140,000	0	
5BR	0		0		0		0	
	0	$0	0	$0	375	$39,550,000	0	$0

k 10% of Average TDC Check $10,547

l Allowable Demolition Remediation and Relocation Costs (units x lesser of (j) or (k)) $2,625,000

Cost Comparisons

Assumptions

	10 Year	30 Year
OMB Nominal Discount Rate	4.2%	5.1%
OMB Real Discount Rate	2.5%	3.2%
Useful Life (Enter 15, 20 or 30 Years)	20	
Inflation Rate for the Selected Useful Life	1.75%	1.018
Real Discount Rate for the Selected Useful Life	2.85%	1.029
Units	375	

Uninflated/Undiscounted Cost Summary

Public Housing	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Operating Cost	$2,025,000				
Capital Cost	$0	$7,000,000	$7,000,000	$7,000,000	NA
Annual Accrual after Modification	0	$0	$0	$0	$300,000

Vouchers	
Annual Voucher and Administrative Costs	$2,922,000
Year 1 Demolition, Remediation and Relocation Costs	$2,625,000

PUM Cost Comparisons:	**Net Present Value**	**New Budget Authority (Voluntary Conversion only)**
Public Housing	$609	$840
Vouchers	$533	$799
Difference	12%	5%
Final Result	**Public Housing Cost exceeds Voucher Cost**	**Public Housing Cost exceeds Voucher Cost**

Net Present Value of the Stream of Costs

Public Housing	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Operating	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000
Initial Capital	$0	$7,000,000	$7,000,000	$7,000,000											
Accrual		$0	$0	$0	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000
TOTAL	$2,025,000	$9,025,000	$9,025,000	$9,025,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000
Discount Rates	1.000000	0.972290	0.945347	0.919152	0.893682	0.868917	0.844840	0.821429	0.798667	0.776536	0.755018	0.734096	0.713754	0.693976	0.674745
Discounted Costs	$2,025,000	$8,774,915	$8,531,760	$8,295,343	$2,077,810	$2,020,233	$1,964,252	$1,909,822	$1,856,900	$1,805,445	$1,755,416	$1,706,773	$1,659,478	$1,613,493	$1,568,783

Net Present Value:	15 Year	20 Year	30 Year
Total	$47,565,421	$54,780,861	$66,498,267
Per Unit	$126,841	$146,082	$177,328.71
Per Unit Month	$705	$609	$493

Voucher	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Voucher	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000
Demolition	$2,625,000														
TOTAL	$5,547,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000
Discount Rates	1.000000	0.972290	0.945347	0.919152	0.893682	0.868917	0.844840	0.821429	0.798667	0.776536	0.755018	0.734096	0.713754	0.693976	0.674745
Discounted Costs	$5,547,000	$2,841,031	$2,762,305	$2,685,761	$2,611,338	$2,538,977	$2,468,621	$2,400,215	$2,333,704	$2,269,037	$2,206,161	$2,145,028	$2,085,589	$2,027,796	$1,971,606

Net Present Value:	15 Year	20 Year	30 Year
Total	$38,894,168	$47,962,347	$62,688,480
Per Unit	$103,718	$127,900	$167,169
Per Unit Month	$576	$533	$464

Net Present Value Delta	15 Year	20 Year	30 Year
Dollar	$128	$76	$28
Percent	18%	12%	6%

Public Housing	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Operating	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000	$2,025,000
Initial Capital Accrual	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000
TOTAL	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000	$2,325,000
Discount Rates	0.656048	0.637869	0.620193	0.603007	0.586298	0.570051	0.554255	0.538897	0.523964	0.509445	0.495328	0.481602	0.468257	0.455281	0.442665
Discounted Costs	$1,525,311	$1,483,045	$1,441,949	$1,401,992	$1,363,143	$1,325,370	$1,288,643	$1,252,935	$1,218,216	$1,184,459	$1,151,637	$1,119,725	$1,088,697	$1,058,529	$1,029,197

Voucher	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Voucher Demolition	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000
TOTAL	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000	$2,922,000
Discount Rates	0.656048	0.637869	0.620193	0.603007	0.586298	0.570051	0.554255	0.538897	0.523964	0.509445	0.495328	0.481602	0.468257	0.455281	0.442665
Discounted Costs	$1,916,972	$1,863,852	$1,812,204	$1,761,988	$1,713,163	$1,665,690	$1,619,534	$1,574,656	$1,531,022	$1,488,597	$1,447,347	$1,407,241	$1,368,246	$1,330,332	$1,293,468

New Budget Authority

Public Housing	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Operating	$2,025,000	$2,060,440	$2,096,500	$2,133,191	$2,170,525	$2,208,512	$2,247,163	$2,286,491	$2,326,508	$2,367,225	$2,408,654	$2,450,808	$2,493,700	$2,537,343	$2,581,750
Initial Capital	$0	$7,122,509	$7,247,161	$7,373,995											
Accrual		$0	$0	$0	$321,559	$327,187	$332,913	$338,739	$344,668	$350,700	$356,838	$363,083	$369,437	$375,903	$382,481
TOTAL	$2,025,000	$9,182,948	$9,343,661	$9,507,187	$2,492,084	$2,535,699	$2,580,076	$2,625,231	$2,671,176	$2,717,924	$2,765,491	$2,813,891	$2,863,137	$2,913,246	$2,964,231

Voucher	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Voucher	$2,922,000	$2,973,139	$3,025,172	$3,078,116	$3,131,987	$3,186,801	$3,242,574	$3,299,322	$3,357,065	$3,415,817	$3,475,598	$3,536,426	$3,598,317	$3,661,292	$3,725,369
Demolition	$2,625,000														
TOTAL	$5,547,000	$2,973,139	$3,025,172	$3,078,116	$3,131,987	$3,186,801	$3,242,574	$3,299,322	$3,357,065	$3,415,817	$3,475,598	$3,536,426	$3,598,317	$3,661,292	$3,725,369

New Budget Authority	15 Year	20 Year	30 Year
Public Housing PUM	$889	$840	$824
Voucher PUM	$774	$799	$864
Delta Dollar	$115	$42	-$40
Delta Percent	13%	5%	-5%

Public Housing	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Operating	$2,626,933	$2,672,908	$2,719,687	$2,767,285	$2,815,716	$2,864,994	$2,915,135	$2,966,154	$3,018,065	$3,070,885	$3,124,629	$3,179,314	$3,234,956	$3,291,571	$3,349,178
Initial Capital Accrual	$389,175	$395,986	$402,917	$409,968	$417,143	$424,444	$431,872	$439,430	$447,121	$454,946	$462,908	$471,009	$479,253	$487,640	$496,174
TOTAL	$3,016,109	$3,068,894	$3,122,604	$3,177,253	$3,232,859	$3,289,438	$3,347,007	$3,405,584	$3,465,186	$3,525,831	$3,587,537	$3,650,323	$3,714,208	$3,779,211	$3,845,352

Voucher	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Voucher Demolition	$3,790,568	$3,856,907	$3,924,408	$3,993,090	$4,062,974	$4,134,081	$4,206,432	$4,280,050	$4,354,956	$4,431,173	$4,508,724	$4,587,632	$4,667,921	$4,749,615	$4,832,739
TOTAL	$3,790,568	$3,856,907	$3,924,408	$3,993,090	$4,062,974	$4,134,081	$4,206,432	$4,280,050	$4,354,956	$4,431,173	$4,508,724	$4,587,632	$4,667,921	$4,749,615	$4,832,739

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Part V

Securities and Exchange Commission

17 CFR Part 239

Additional Form F–6 Eligibility Requirement Related to the Listed Status of Deposited Securities Underlying American Depositary Receipts; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release Nos. 33–8287, 34–48482, International Series Release No. 1273; File No. S7–16–03]

RIN 3235–A189

Additional Form F–6 Eligibility Requirement Related to the Listed Status of Deposited Securities Underlying American Depositary Receipts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a proposed amendment to Form F–6 to make the form unavailable to register under the Securities Act of 1933 depositary shares evidenced by unsponsored American depositary receipts if the foreign issuer has separately listed the deposited securities on a registered national securities exchange or automated inter-dealer quotation system of a national securities association. The proposed amendment is intended to benefit U.S. investors by ensuring that investors in the equity securities of the same foreign issuer all enjoy a similar level of shareholder rights and by minimizing potential investor confusion. It also is intended to improve the ability of foreign companies to control the form in which their securities are traded in U.S. markets.

DATES: Please submit your comments on or before October 17, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–16–03. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990, U.S. Securities & Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0302.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed amendment to Form F–6,[2] the registration statement form under the Securities Act of 1933 (''Securities Act'')[3] for depositary shares evidenced by American depositary receipts.

I. Background and Overview of the Proposal

American depositary receipts (''ADRs'')[4] are certificates that represent an ownership interest in foreign securities on deposit with an intermediary. ADRs were developed as a means to facilitate U.S. trading in foreign securities when direct ownership would have been impractical. With the increasing globalization of securities markets and technological advancements in clearance procedures, an increasing number of foreign issuers[5] today choose to list their ordinary shares in the United States directly, rather than as ADRs. To better adapt the regulatory treatment of ADRs to the evolution of the market for foreign securities, the Commission is soliciting public comment on a proposed amendment to the eligibility requirements of Form F–6, the Securities Act registration form for ADRs. The Commission's proposed action has been prompted by proposals by market participants to issue unsponsored ADRs relating to the ordinary shares of a foreign issuer that are separately listed on a U.S. exchange.[6] The proposed amendment would not permit the use of Form F–6 to register ADRs that a foreign issuer has not sponsored if that issuer has listed its securities in ordinary share form on a national securities exchange or automated quotation system of a national securities association.

A. American Depositary Receipts

An American depositary receipt represents an ownership interest in a specified number or fraction of securities that have been deposited with a depositary (''deposited securities''). The deposited securities are typically equity securities[7] of a foreign issuer, and the depositary is usually a U.S. bank or trust company. ADRs were developed primarily to facilitate the transfer of ownership of foreign securities in the United States and the conversion of foreign currency dividends into U.S. dollars, as an alternative to purchasing ordinary shares on foreign markets.

ADRs were developed in an era of physical securities and physical settlement as a means to facilitate the transfer of ownership of foreign securities in the United States. Because a foreign company's stock transfer books were generally maintained outside the United States, and because of differences in clearance and settlement practices, ADRs were a more convenient way to trade foreign securities. Even with vastly improved communications and clearance and settlement technology, ADRs remain the most common form in which foreign securities trade in the United States.

An ADR facility may be ''sponsored'' or ''unsponsored.'' Although sponsored and unsponsored facilities are similar in many respects, for example each represents a fixed number or fraction of underlying securities on deposit with a depositary, there are a number of differences between them with regard to foreign issuer involvement, the rights and obligations of the ADR holders, and the practices of market participants.

1. Unsponsored ADRs

An unsponsored facility is established by the depositary acting on its own,

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[2] 17 CFR 239.36.

[3] 15 U.S.C. 77a *et seq.*

[4] Since 1983, the Commission's regulations have made a distinction between ADRs and American depositary shares (''ADSs''). Under this distinction, an ADR is the physical certificate that evidences ADSs (in much the same way as a stock certificate evidences shares of stock), and an ADS is the security that represents an ownership interest in deposited securities (in much the same way as a share of stock represents an ownership interest in a corporation). Although conceptually accurate, it appears that ADR market participants largely do not differentiate between ADRs and ADSs. In this release, the term ''ADS'' is not used, and the term ''ADR'' may, depending on the context, refer to either the physical certificate or the security evidenced by the certificate.

[5] The term ''foreign issuer'' is defined in Securities Act Rule 405 [17 CFR 230.405]. A foreign issuer is any issuer that is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

[6] This is not the first time the Commission has addressed questions relating to unsponsored ADRs. In 1991, the Commission published a concept release to seek comment on several questions relating to ADRs. (Release No. 33–6894, May 23, 1991). One of the main issues at that time related to unsponsored ADRs that would essentially duplicate and be fungible with sponsored ADRs for the same securities of the same foreign issuer. The Commission did not propose or adopt any rules as a result of the concept release.

[7] Debt securities may also underlie ADRs.

usually in response to a perceived interest among U.S. investors in a particular foreign security that is not traded on a U.S. exchange or quotation system. An unsponsored ADR facility does not involve the formal participation, or even require the acquiescence of, the foreign company whose securities will be represented by the ADRs. If the foreign issuer is neither reporting under the Securities Exchange Act of 1934 (the ''Exchange Act'')[8] nor exempt from reporting obligations under the ''information supplying'' exemption of Exchange Act Rule 12g3–2(b),[9] the depositary requests that the issuer establish the exemption. Once the foreign issuer is either reporting under the Exchange Act or exempt, the depositary files a Securities Act registration statement on Form F–6 for the ADRs.[10]

An unsponsored ADR arrangement is essentially a two-party contract between the depositary and the ADR holders. The holders pay any fees relating to unsponsored ADRs, such as currency conversion fees, dividend distribution fees, and charges for other distributions and services. Under the deposit agreement for most unsponsored facilities, the depositary has no obligation to exercise voting rights on behalf of ADR holders, or to notify ADR holders about shareholder meetings or to distribute proxy information, annual reports, or other materials it receives from the foreign company.

2. Sponsored ADRs

A sponsored ADR arrangement is effectively a three party-contract: it is established jointly by a deposit agreement between the foreign company whose securities will be represented by the ADRs and the depositary, with ADR holders as third-party beneficiaries. The foreign company generally bears some of the costs, such as dividend payment fees, but the ADR holders may pay other costs such as deposit and withdrawal fees. Under most sponsored ADRs, the depositary undertakes, at the foreign company's request (and at the company's expense), to arrange for the exercise of voting rights, the distribution of proxy materials, and the forwarding of shareholder communications to the ADR holders. Although the terms of the deposit agreement for a sponsored ADR are different from those of an unsponsored ADR, sponsorship does not lead to different reporting or registration requirements under either the Exchange Act or the Securities Act.

Foreign companies undertaking public offerings or listings of ADRs in the United States, and which then become reporting companies under the Exchange Act, virtually always establish sponsored arrangements.[11] The New York Stock Exchange (the ''NYSE'') and the American Stock Exchange (''AMEX'') will list only sponsored ADRs.[12] In practice Nasdaq will also list only sponsored ADRs, although its rules do not contain such a requirement.[13]

The majority of non-Canadian foreign companies whose securities are listed both in the United States and on a non-U.S. exchange use ADRs to list in the United States. ADRs have developed as a cost effective and relatively efficient means to provide for the clearance and settlement of foreign securities, and distribution of dollar-denominated dividends, in the United States.

B. Other Forms in Which Foreign Securities Are Listed on U.S. Trading Markets

Many foreign securities are listed in the United States in ordinary share form, without the use of ADRs. In this respect, these foreign securities are identical to securities of U.S. companies. For example, because the U.S. and Canadian securities markets and clearance and settlement systems developed along side one another over a long period of time, the markets have developed effective mechanisms that permit the same securities to list on a U.S. market and a Canadian market. As a result, Canadian companies list their securities in the United States without the use of ADRs. Some other foreign issuers, for example a number of Dutch issuers, issue a class of so-called ''New York shares'' rather than ADRs.

There are some foreign companies whose sole trading market is in the United States and therefore do not need to have securities transfer arrangements in more than one country. These companies have a single transfer agent located in the United States. These companies, which are generally incorporated in Bermuda, the Bahamas or Cayman Islands, are identical to U.S. companies in this respect.

Other foreign companies have created ''global share'' arrangements, in which the same security is traded in two markets without the use of ADRs.[14] The first such global share arrangement was created in connection with Daimler-Benz's acquisition of Chrysler in 1998. Since that time, three other foreign companies listed in the United States have established global share arrangements: Celanese AG, UBS AG and Deutsche Bank.

C. Unsponsored ADR Facilities Relating to Listed Ordinary Shares

Some market participants have proposed to establish unsponsored ADRs relating to shares of foreign issuers that are listed directly on a national securities exchange. These ADRs would bear a different CUSIP number from the underlying securities, each unsponsored ADR would represent a fraction or multiple of the underlying shares, and the unsponsored ADRs would trade in the over-the-counter market while the underlying shares would continue to trade on an exchange.

The Commission is concerned that having listed shares and unsponsored ADRs for the same issuer could cause investor confusion and disadvantage investors who, by purchasing unsponsored ADRs, would not benefit from the same voting rights, shareholder communications and market liquidity as ordinary shareholders. We also are concerned that unsponsored ADRs representing listed shares might disadvantage foreign issuers that have chosen to list their shares directly by reducing the degree of control those companies retain over the form in which their securities trade in the United States compared to domestic issuers. The proposed amendment to Form F–6 is intended to address these concerns.

[8] 15 U.S.C. 78a *et seq.*

[9] 17 CFR 240.12g3–2(b).

[10] *See* Section II, *infra.*

[11] Sponsored ADR facilities are described by market participants in terms of three categories based on the extent to which the foreign company has sought to access the U.S. capital markets. A ''Level I facility'' is a sponsored facility traded in the over-the-counter markets. A ''Level II facility'' denotes ADRs quoted on the Nasdaq Stock Market (''Nasdaq'') or listed on a national securities exchange when the ADRs have not been offered in a public offering in the United States (but are publicly traded in one or more markets outside the United States). A ''Level III facility'' refers to ADRs quoted on Nasdaq or listed on a national securities exchange following a U.S. public offering.

[12] *See* New York Stock Exchange (NYSE) Listed Company Manual, ''Sponsored American Depositary Receipts or Shares,'' Section 103.04; American Stock Exchange (AMEX) Constitution and Rules, ''Original Listing Applications of Foreign Issuers,'' Section 220.

[13] *See* The Nasdaq Stock Market, ''Listing Requirements and Fees.''

[14] Global shares allow foreign companies greater access to their shareholders, as they are no longer dependent on an ADR depositary bank for distribution of shareholder materials, tabulation of shareholder votes, distribution of dividends, and other shareholder services. They are also potentially attractive to investors wishing to trade foreign securities on a U.S. exchange, because investors who have purchased ordinary shares in a foreign market otherwise must first convert them into ADRs before being able to sell those securities on a U.S. exchange.

II. Securities Act Registration and Eligibility Requirements for Form F–6

For purposes of Securities Act registration, ADRs and the deposited securities are separate securities, requiring separate registration or exemption from Securities Act registration. The regulatory structure relating to ADRs was developed in 1955,[15] and, other than a minor amendment in 1983, that structure remains in place today. The Commission has adopted Form F–6 specifically for the registration of ADRs,[16] and this form may be used to register both sponsored and unsponsored facilities. A Form F–6 registration statement, which the depositary files with the Commission, must become effective before the depositary begins to accept deposits of securities and to issue ADRs. A Form F–6 registration statement contains no substantive disclosure about the foreign company whose securities the ADRs represent, and does not indicate where those securities are traded. The disclosure relates solely to the contractual terms of deposit.

Under the present eligibility requirements, ADRs may be registered under the Securities Act on Form F–6 if four conditions are satisfied:

- The deposited securities are those of a foreign issuer;[17]
- the holder of the ADR has the right to withdraw the deposited securities at any time, subject to temporary delays, payment of fees and compliance with legal requirements;[18]
- the deposited securities are exempt from Securities Act registration and freely tradable in the United States (for example, they are not restricted securities under Securities Act Rule 144) or are separately registered under the Securities Act;[19] and
- as of the filing date of the Form F–6, the foreign company is reporting under the periodic reporting requirements of Section 13(a)[20] or 15(d)[21] of the Exchange Act or exempt from registration under Exchange Act Rule 12g3–2(b).[22]

Form F–6 is signed and filed by the depositary bank and, for sponsored ADRs only, also by the foreign issuer and prescribed officers and directors. As a result, under the present eligibility requirements, a depositary bank could register and issue unsponsored ADRs relating to any foreign company that is registered under the Exchange Act and whose securities trade in the United States in ordinary share form.

III. Discussion of Proposed Changes

We propose to add one new eligibility requirement to Form F–6, which would preclude the use of Form F–6 to register unsponsored ADRs if the shares of the foreign issuer to be deposited already trade in the United States in ordinary share form on a registered national securities exchange[23] or an automated inter-dealer quotation system of a national securities association.[24] The proposed requirement would prevent a depositary from establishing an unsponsored ADR facility relating to the shares of a foreign issuer that are already listed in the United States in ordinary share form. As discussed in the following sections, we believe various rationales support this amendment.

A. Investor Rights

We are concerned that offering unsponsored ADRs for underlying securities of a foreign issuer that are also listed on a U.S. exchange or automated inter-dealer quotation system of a national securities association may create an imbalance between the information that ADR holders receive and the information that holders of the issuer's ordinary shares receive. Unsponsored ADR holders who neither receive shareholder communications nor enjoy voting rights are unable to participate in corporate actions or make fully informed investment decisions on equal footing with holders of the ordinary shares. The proposed amendment should benefit U.S. investors by ensuring that U.S. investors in equity securities of the same foreign issuer enjoy a similar level of shareholder rights.

Questions Related to Investor Rights

- Do the purchasers of unsponsored ADRs understand the terms of the security? Specifically, do they understand the differences in dividends, voting, and other rights between the unsponsored ADR and the ordinary shares when those shares are listed on a registered national securities exchange or automated inter-dealer quotation system of a national securities association? What weight do investors give to the rights attached to security ownership in determining whether to purchase ADRs or ordinary shares?
- Are investors aware, or are they made aware, by broker-dealers or otherwise, of any differences in their rights as holders of unsponsored ADRs compared to their rights as ordinary shareholders? What obligations do broker-dealers have to provide this type of information to investors? What information do broker-dealers provide to investors in this area?
- Is more disclosure about the differences between the rights of shareholders and unsponsored ADR holders necessary? If so, what additional disclosure would be helpful? Should these concerns be addressed by disclosure rather than by limiting the availability of unsponsored ADRs?

B. Potential for Investor Confusion

Concurrent trading of global shares and unsponsored ADRs on different U.S. markets by U.S. investors may create an element of investor confusion. Investors may not be aware of the differences between the global shares and unsponsored ADRs, which generally have more restricted voting rights, limited availability of information to holders, higher fees, and more limited liquidity.

Questions Related to Investor Confusion

- Would concurrent trading of unsponsored ADRs and global shares of the same issuer result in investor confusion? If so, would the confusion be disadvantageous to investors? What type

[15] In 1955, the Commission considered the regulatory framework for ADRs and permitted their registration on Form S–12, which was specifically adopted for the registration of ADRs [Securities Act Release No. 3593 (November 17, 1955)].

[16] Securities Act Release No. 6459 (March 24, 1983) [48 FR 12348]. The adoption of Form F–6 replaced Form S–12.

[17] *See* General Instruction I.A. to Form F–6.

[18] *See* General Instruction I.A.(1)(i)–(iii) to Form F–6.

[19] *See* General Instruction I.A.(2) to Form F–6.

[20] 15 U.S.C. 78m(a).

[21] 15 U.S.C. 78o(d).

[22] *See* General Instruction I.A.(3) to Form F–6.

[23] A ''national securities exchange'' is an exchange registered as such under section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently nine national securities exchanges registered under section 6(a) of the Exchange Act: AMEX, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, International Securities Exchange, NYSE, Philadelphia Stock Exchange and Pacific Exchange. In addition, an exchange that lists or trades security futures products (as defined in Exchange Act Section 3(a)(56) [15 U.S.C. 78c(a)(56)]) may register as a national securities exchange under Section 6(g) of the Exchange Act solely for the purpose of trading security futures products. Two have done so: NASDAQ Liffe and One Chicago.

[24] A ''national securities association'' is an association of brokers and dealers registered as such under Section 15A of the Exchange Act [15 U.S.C. 78o–3]. The National Association of Securities Dealers (NASD) is the only national securities association registered with the Commission under Section 15A(a) of the Exchange Act. The NASD partially owns and operates The Nasdaq Stock Market (Nasdaq). Nasdaq has filed an application with the Commission to register as a national securities exchange. In addition, Section 15A(d) of the Exchange Act [15 U.S.C. 78o–3(k)] provides that a futures association registered under Section 17 of the Commodity Exchange Act [7 U.S.C. 21] shall be a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act [15 U.S.C. 78o(b)(11)].

of investors might be affected and how would they be disadvantaged?

• Would different CUSIP numbers and different pricing,[25] and the fact that the unsponsored ADRs and ordinary listed shares trade on different markets, be sufficient to prevent investor confusion? If not, how could investor confusion be further reduced? Would greater disclosure ameliorate the situation?

• Who are the likely purchasers of these unsponsored ADRs? Are there circumstances where an unsponsored ADR is a more appropriate investment for a U.S. investor, or in which an investor may prefer to purchase unsponsored ADRs rather than the ordinary shares? If so, what are those circumstances?

• Are there prohibitions, restrictions, or limitations on ownership by some U.S. investors of ordinary shares of a foreign company that are listed on a national securities exchange or automated system of a national securities association that would not apply in the case of ADRs representing those shares? To what type of investors would these restrictions apply?

• Should Form F–6 be amended to require disclosure regarding the markets on which the deposited securities are traded? Would this disclosure be helpful to investors?

C. Equal Treatment of Foreign Issuers and Domestic Issuers

The regulatory structure for ADRs under the Federal securities laws, in permitting a depositary to establish unsponsored ADRs without issuer participation, may disadvantage foreign issuers as compared to domestic companies. The Commission is of the view that a foreign company seeking full access to U.S. capital markets by listing on a U.S. exchange or Nasdaq should be able to retain a degree of control over the form in which its securities are traded comparable to that of a domestic issuer.

The regulation of ADRs, in allowing for unsponsored facilities relating to shares of a foreign issuer that are listed in the United States in ordinary share form, may inadvertently operate to the detriment of foreign companies that have chosen to list their ordinary shares directly by facilitating an undesirable division in the market for their shares. For example, the ADRs relating to global shares would trade over-the-counter while the global shares themselves continue to trade on a registered national exchange. This potential does not exist for U.S. companies, to which Form F–6 does not apply.

Our proposal to modify the eligibility requirements of Form F–6 to exclude its use to register unsponsored ADRs if the foreign company has listed the underlying securities directly in the U.S. market is intended to remedy this imbalance and place the ordinary shares of foreign companies on equal footing with the shares of U.S. issuers.

Questions Regarding Equal Treatment and Competitive Effects

• Would a foreign issuer that has ordinary shares listed in the United States be placed at a competitive or other disadvantage with regard to either domestic companies, or to other foreign issuers, if an unsponsored ADR were created relating to the listed ordinary shares? If so, how? How would the possibility that an unsponsored ADR might be created affect the decision of a foreign issuer to seek a U.S. listing?

• To what degree, if any, would unsponsored ADRs increase the risk of fragmentation and disorder in the market for securities of a listed foreign issuer?

• Are there circumstances under which a foreign issuer would choose both to list its ordinary shares on a U.S. market and to sponsor an ADR facility relating to those securities? If so, under what circumstances? Would the sponsored ADRs and the underlying shares trade on the same U.S. market? Would they raise the same concerns related to investor rights and investor confusion? Would it be appropriate to defer to an issuer's choice to have its securities traded in both sponsored ADR form and ordinary share form?

• Would the proposed amendment to Form F–6 create competitive burdens for depositaries or other ADR market participants? If so, what are those burdens and how could they be minimized or avoided?

• Is the proposed amendment to Form F–6 appropriate to address these concerns?

D. Interference With the Corporate Governance Objectives of Foreign Companies

As discussed above, some foreign companies have chosen not to have their securities trade as ADRs. Permitting unsponsored ADRs for listed securities may create a disincentive for foreign companies to list in global or ordinary share form. A foreign company's decision to list directly as a global or ordinary share may be based on corporate governance considerations, such as direct access to shareholders, and often entails a more costly procedure to coordinate the clearance and settlement systems in different jurisdictions. Unsponsored ADRs for listed shares may interfere with this decision by foreign companies, and may make foreign companies reluctant to enter or remain listed in the United States.

Questions Regarding Potential Interference With Corporate Governance Objectives of Foreign Issuers

• What role do corporate governance issues, such as access to shareholders, play in a foreign issuer's determination of how it lists in the United States? Are unsponsored ADRs disadvantageous to foreign issuers from this perspective? If so, how?

• Why do foreign issuers elect to list their securities in the form of global or ordinary shares? What are the advantages and disadvantages of these shares to market participants, including investors, broker-dealers, and exchanges? What are the costs, monetary and other, involved in listing directly global or ordinary shares as compared to ADRs? Would the possibility that an unsponsored ADR may be created deter foreign issuers from creating global shares?

• Do investors prefer more direct access to issuers afforded by ownership of global or ordinary shares compared to unsponsored ADRs? Would they be likely to purchase global or ordinary shares over unsponsored ADRs for this reason? Do investors prefer more options in the form of securities available when investing in foreign issuers? Are issuers concerned if their securities trade in more than one form?

IV. General Request for Comments

We request and encourage any interested persons to submit comments regarding:

• The proposed changes that are the subject of this release,

• Additional or different changes, or

• Other matters that may have an effect on the proposals contained in this release, including whether there are other approaches or alternative means of addressing the concerns that it discusses.

We request comment from the point of view of registrants, investors, depositaries, national securities exchanges, national securities associations and others who are involved in the market for ADRs and the securities of foreign issuers in the United States. With regard to any comments, we note that such comments are of greatest assistance to our

[25] If an unsponsored ADR represented a multiple of underlying securities, presumably the ADRs and the underlying securities would trade at different prices.

rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

In addition to responding to the questions presented in this release, the Commission invites comments to supplement or correct the information and assumptions it contains related to:

- The functioning of the ADR market,
- The roles of market participants,
- Advantages and disadvantages of unsponsored ADRs that either represent underlying shares that are listed in the U.S. or that duplicate sponsored ADRs,
- The effects of unsponsored ADRs on investors, and
- Any other related matters.

V. Paperwork Reduction Act

The proposed amendment to Form F–6 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[26] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[27] The title for the collection of information is ''Form F–6.'' 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.

Form F–6 (OMB Control No. 3235–0292) prescribes information that an issuer must disclose to register American depositary receipts under the Securities Act. Preparing and filing a registration statement on Form F–6 is a collection of information. Respondents to this collection of information are institutions, usually U.S. banks or trust companies, that act as depositaries and establish ADR facilities. Foreign companies that sponsor ADR facilities are also respondents.

The proposed amendment, if adopted, would add an eligibility requirement to Form F–6. The proposed eligibility requirement would not permit the use of Form F–6 to register ADRs that a foreign issuer has not sponsored if that issuer has listed its securities in ordinary share form on a national securities exchange or automated quotation system of a national securities association. We believe the proposed amendment would bring the ability of foreign companies to control the form in which their securities are traded in U.S. markets to a level comparable to that of domestic issuers and reduce the potential for investor confusion.

We currently estimate that Form F–6 results in a total annual compliance burden of 2,550 hours and an annual cost of $765,000. The burden was calculated by multiplying the estimated number of respondents filing Form F–6 annually (150) by the estimated average number of hours each entity spends completing the form (34 hours). We estimate that 50% of the burden is prepared by the respondent ($150 \times 34 \times 0.50 = 2{,}550$). We estimate that 50% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour ($150 \times 34 \times 0.50 \times \$300 = \$765{,}000$). This portion of the burden is reflected as a cost.

A. Reporting and Cost Burden Estimates

For our proposal regarding eligibility for use of Form F–6, the amount of information required to be included in a Form F–6 registration statement would remain the same. Accordingly, for purposes of the Paperwork Reduction Act, our preliminary estimate is that the amount of time necessary to prepare the registration statement, and hence, the total amount of burden hours, would not change. However, there may be the possibility that determining eligibility for use of Form F–6 may result in the respondent investing more resources in technology, relying to a greater extent on outside advisors, or that the average cost associated with the portion of the burden prepared by outside advisors may increase. We request comment on whether, for purposes of the Paperwork Reduction Act, the burden will increase or decrease. If so, by what amount? Would the proposal have any other effect on the total compliance burden?

We estimate that determining whether the proposed additional eligibility requirement for the use of Form F–6 is satisfied would add 0.50 burden hours to each registration statement on Form F–6. Thus, we estimate this aspect of the proposal will add an additional 75 burden hours to the current Form F–6 (0.50 hours $\times$ 150 respondents). We estimate that 50% of the burden is prepared by the respondent ($0.50 \times 150 \times 0.50 = 37.5$). We estimate that 50% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour ($0.50 \times 150 \times 0.50 \times \$300 = \$11{,}250$). This portion of the burden is reflected as a cost.

As a result, we estimate the total annual compliance burden for Form F–6 after our proposed revisions to be 2,587.5 hours and an annual cost of $776,250, an increase of 37.5 hours and $11,250 in cost. Compliance with the revised eligibility requirements for Form F–6 would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the requirements would not be kept confidential. We do not believe that the imposition of this requirement would alter significantly the number of respondents that file registration statements on Form F–6.

B. Request for Comment

We request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–16–03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–16–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[26] 44 U.S.C. 3501 *et seq.*

[27] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

VI. Cost-Benefit Analysis

Globalization of capital markets and technological developments have contributed to increased interest among U.S. investors in foreign securities. Those factors also have led a greater number of foreign companies to list their shares directly in the United States. We are proposing to amend Form F–6 to not permit registration of unsponsored American depositary receipts relating to shares of foreign companies that are listed on a national securities exchange or automated quotation system of a national securities association. We are sensitive to the costs and benefits of our proposal, which we discuss below.

A. Expected Benefits

The proposed amendment to Form F–6 should benefit both U.S. investors and foreign issuers who have their shares listed directly in the United States. The proposed amendment should benefit U.S. investors by ensuring that equity investors in the same foreign issuer enjoy a comparable level of shareholder rights. Unlike ordinary or global shareholders, unsponsored ADR holders typically neither receive shareholder communications from the issuer nor enjoy voting rights, and are therefore less able to participate in corporate actions. By eliminating unsponsored ADRs for listed foreign securities, the proposed amendment would provide that U.S. investors in equity securities of the same foreign company benefit from the rights attached to holding ordinary or global shares.

We also expect that the proposed amendment would benefit investors by minimizing potential confusion between unsponsored ADRs that trade in the over-the-counter market and global or ordinary shares of the same foreign issuer that trade on an exchange or automated quotation system of a national securities association. We also anticipate that because the proposed rule may encourage more foreign issuers to seek listings of their shares in the United States in ordinary or global share form, U.S. investors may benefit by having a greater number of foreign issuers in which they may invest directly.

Foreign issuers who have chosen to list their shares directly on a U.S. exchange or automated quotation system of a national securities association should, as a result of the proposed amendment, have more control over the form in which their securities are traded in the United States. This should discourage the detrimental segmentation of the market for their shares in the United States and avoid a potential imbalance as compared to the shares of U.S. issuers, for which a depositary would be less likely to create a depositary receipt. We believe this may encourage more foreign companies to enter U.S. capital markets.

Foreign issuers may choose to list as global or ordinary shares directly in the United States for reasons related to corporate governance, including more direct access to U.S. shareholders. This decision to pursue a direct listing may entail greater financial, administrative and other costs to the company, as compared to listing in ADR form. The proposed amendment, if adopted, should allow foreign issuers that have chosen to list their shares directly in the United States to derive more completely the intended benefits of a direct listing as compared to listing as an ADR, and for which they have undertaken the greater expense.

B. Expected Costs

The proposed amendment to Form F–6 may result in some costs to institutions that act as depositaries and other participants in the ADR market. If the amendment were adopted, depositaries seeking to establish unsponsored ADRs would be required to ascertain whether the securities of the foreign issuer to be deposited were already listed on a national exchange or automated quotation system of a national securities association. This would increase the time necessary to prepare a Form F–6 registration statement. For purposes of the PRA, we have estimated that the proposed amendment would increase the annual compliance cost for Form F–6 by 37.5 hours and $11,250. The proposed amendment also may create a competitive cost to depositaries, which would no longer be able to establish unsponsored ADRs to compete with directly listed foreign securities.

The proposed amendment may also create a cost to investors who may prefer ADRs as the form in which they invest in a foreign company. To the extent unsponsored ADRs for listed companies would no longer be permitted if the proposal were adopted, the investment choice of these investors may be limited. These other costs are difficult to quantify.

C. Comment Solicited

We request your views on the costs and benefits described above, particularly with regard to the questions raised in Sections III and IV, as well as on any other costs and benefits that could result from adoption of the proposed amendment to Form F–6. For example, what benefits do unsponsored ADRs that relate to listed securities bring to depositaries, investors or others? What effect would eliminating this particular product have on depositaries, investors or others? Would those parties incur a cost if the ADRs were not available? Would there be any effect on the trading of other securities? What is the likely economic impact of these or other costs or benefits? Can they be quantified in any meaningful way? If so, how and what conclusions should be drawn? The Commission also requests data to quantify the expected costs and the value of the anticipated benefits.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendment to Form F–6 under the Securities Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would add one new eligibility requirement to Form F–6 that would preclude the use of Form F–6 to register unsponsored ADRs if the shares of the foreign issuer to be deposited already trade in the United States in ordinary or global share form on a registered national securities exchange or an automated quotation system of a national securities association. Unsponsored ADR facilities are established by institutions that act as depositaries, which are typically large banks; these depositaries are not small entities. The ordinary or global shares underlying the unsponsored ADRs are listed foreign issuers; these foreign issuers are not small entities.[28] The ordinary or global shares underlying the unsponsored ADRs are listed on registered securities exchanges or an automated quotation system of a national securities association; these exchanges and national securities associations are not small entities. For this reason, the proposed amendment should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide

[28] Based on an analysis of the language and legislative history of the Act, Congress does not appear to have intended the Regulatory Flexibility Act to apply to foreign issuers.

empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[29] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act [30] and Section 3(f) of the Exchange Act [31] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [32] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of this proposed amendment is to improve the ability of foreign companies to control the form in which their securities are traded in U.S. markets and to avoid potential investor confusion. We think that the proposal would promote efficiency by enhancing the ability of foreign issuers to access their U.S. shareholders. We also believe that the proposal would update the regulatory framework for ADRs to reflect the globalization and technological developments that have occurred in securities markets, eliminate the potential for differential treatment between foreign issuers with directly listed shares and domestic issuers, and make the U.S. capital markets more attractive to foreign issuers. In fact, we expect that the proposals would enhance competition among foreign issuers seeking to list in the United States by encouraging them to list in ordinary or global share form. The proposal may create a competitive burden for depositaries that would seek to establish unsponsored ADR facilities relating to foreign shares that are listed in the United States, and to any investors who would prefer to own such ADRs rather than ordinary shares.

We solicit comment on these matters with respect to the proposed rules. Would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act? Would eliminating the use of Form F–6 for unsponsored ADRs related to listed securities give an unfair advantage to other market participants? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

IX. Statutory Basis and Text of Proposed Rule Amendment

We propose the amendment to Securities Act Form F–6 pursuant to sections 6, 7, 10, and 19 of the Securities Act, as amended,[33] and sections 12, 13, 15(d), and 23(a) of the Exchange Act.[34]

[29] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[30] 15 U.S.C. 77b(b).

[31] 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 77f, 77g, 77j, and 77s.

[34] 15 U.S.C. 78*l*, 78m, 78o(d), and 78w.

Text of Proposed Amendment

List of Subjects in 17 CFR Part 239

Reporting requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend Form F–6 (referenced in § 239.36), General Instruction I.A., by adding paragraph 4 to read as follows:

Note: The text of Form F–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–6

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–6

A. General.

* * * * *

(4) The deposited securities are not listed on a registered national securities exchange or automated inter-dealer quotation system of a national securities association, unless the issuer of the deposited securities sponsors the ADR arrangement.

* * * * *

By the Commission.

Dated: September 11, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–23737 Filed 9–16–03; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 2738/P.L. 108–77

United States-Chile Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 909)

H.R. 2739/P.L. 108–78

United States-Singapore Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 948)

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Prison Rape Elimination Act of 2003 (Sept. 4, 2003; 117 Stat. 972)

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