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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–46–AD; Amendment 39–13557; AD 2004–07–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80C2 series turbofan engines. This AD requires replacing certain high pressure turbine (HPT) stage 1 disks at or before reaching a new reduced life cycle limit. This AD is prompted by an updated low-cycle-fatigue (LCF) analysis of the HPT stage 1 disk. We are issuing this AD to prevent LCF cracking and failure of the HPT stage 1 disk due to exceeding the life limit, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective May 6, 2004.

ADDRESSES:

You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422.

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

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Office Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2 series turbofan engines. We published the proposed AD in the **Federal Register** on November 12, 2003 (68 FR 64001). That action proposed to require replacing certain HPT stage 1 disks at or before reaching a new reduced life cycle limit.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

One commenter states that the overall impact to him is minimal. The commenter does not request any changes to the proposal as written. The FAA agrees.

One commenter requests that the proposal be withdrawn. The commenter believes that an AD is not necessary because the lower life limit has already been published by the manufacturer in Chapter 5, Airworthiness Limitations, of the engine manual.

The FAA does not agree. Changes to life limits that appear only in a manual or type certificate data sheet, even if FAA-approved, are not enforceable for all operators. Life limit reductions from the original certified limits become enforceable for all operators only through the AD process (14 CFR part 39).

Conclusion

We have carefully reviewed the available data, including the comments received, 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.

Costs of Compliance

There are about 526 CF6–80C2A5F, CF6–80C2B5F, CF6–80C2B7F, and CF6–80C2D1F turbofan engines of the affected design in the worldwide fleet. We estimate that 208 engines installed on airplanes of U.S. registry would be affected by this AD. The action does not impose any additional labor costs. The prorated cost of a new HPT stage 1 disk is about $43,306 per engine. Based on these figures, and on the prorating for the usage of the HPT stage 1 disks, the cost of the AD on U.S. operators is estimated to be $9,007,648.

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–46-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):

2004–07–13 General Electric Company: Amendment 39–13557. Docket No. 2003–NE–46–AD.

Effective Date

(a) This AD becomes effective May 6, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2A5F, CF6–80C2B5F, CF6–80C2B7F, and CF6–80C2D1F turbofan engines with high pressure turbine (HPT) stage 1 disks, part numbers (P/Ns) 1531M84G10 or 1531M84G12 installed. These engines are installed on, but not limited to, Airbus Industrie A300 and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 airplanes.

Unsafe Condition

(d) This AD is prompted by an updated low-cycle-fatigue (LCF) analysis of the HPT stage 1 disk. The actions specified in this AD are intended to prevent LCF cracking and failure of the HPT stage 1 disk due to exceeding the life limit, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

(f) Replace HPT stage 1 disks, P/Ns 1531M84G10 and 1531M84G12, at or before the disk accumulates 10,720 cycles-since-new (CSN).

(g) After the effective date of this AD, do not install any HPT stage 1 disk, P/N 1531M84G10 or 1531M84G12, that exceeds 10,720 CSN.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) None.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on March 24, 2004.

Francis A. Favara,

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

[FR Doc. 04–7235 Filed 3–31–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–05–30 applicable to Rolls-Royce plc (RR) RB211 Trent 500 series turbofan engines that was published in the **Federal Register** on March 18, 2004 (69 FR 12783). The engine model designation in the Applicability and Unsafe Condition paragraphs is incorrect. This document corrects that model designation. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective April 1, 2004.

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

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 04–5620 applicable to RR RB211 Trent 500 series turbofan engines, was published in the **Federal Register** on March 18, 2004 (69 FR 12783). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 12785, in the second column, in the Amended Section, in the Applicability paragraph (c), in the second line, "Trent 500 series turbofan engines.'' is corrected to read "RB211 Trent 500 series turbofan engines.''

■ Also, on page 12785, in the third column, in the Amended Section, in the Unsafe Condition paragraph (d), in the third line, "Trent 500'' is corrected to read "RB211 Trent 500''.

Issued in Burlington, MA, on March 24, 2004.

Francis A. Favara,

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

[FR Doc. 04–7234 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–251E]

Schedules of Controlled Substances: Extension of Temporary Placement of Alpha-Methyltryptamine (AMT) and 5-Methoxy-N,N-Diisopropyltryptamine (5-MeO-DIPT) in Schedule I of the Controlled Substances Act

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

ACTION: Final rule.

SUMMARY: This final rule is issued by the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) in Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of AMT and 5-MeO-DIPT is due to expire on April 3, 2004. This document will extend the temporary scheduling of AMT and 5-MeO-DIPT to October 3, 2004 or until rulemaking proceedings are completed, whichever occurs first.

EFFECTIVE DATE: April 1, 2004.

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

SUPPLEMENTARY INFORMATION: On April 4, 2003, the Deputy Administrator of the DEA published a final rule in the **Federal Register** (68 FR 16427) amending 1308.11(g) of title 21 of the Code of Federal Regulations to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Deputy Administrator that the temporary scheduling of AMT and 5-MeO-DIPT was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary

scheduling of a substance expire at the end of one year from the date of issuance of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services, or on the petition of any interested party. Such proceedings regarding AMT and 5-MeO-DIPT have been initiated by the Acting Deputy Administrator of the DEA.

The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse and the relative potential for abuse for AMT and 5-MeO-DIPT. The Acting Deputy Administrator has submitted these data to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Acting Deputy Administrator has also requested a scientific and medical evaluation and a scheduling recommendation for AMT and 5-MeO-DIPT from the Assistant Secretary for Health. Therefore, the temporary scheduling of AMT and 5-MeO-DIPT which is due to expire on April 3, 2004, may be extended until October 3, 2004, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Deputy Administrator hereby orders that the temporary scheduling of AMT and 5-MeO-DIPT be extended until October 3, 2004, or until the proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Regulatory Certifications

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

The six month extension of AMT and 5-MeO-DIPT in Schedule I of the CSA is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12866, section 3(d)(1). This action responds to an emergency situation posing an imminent hazard to the public safety and is essential to the criminal law enforcement function of the United States.

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132 and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: March 25, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–7219 Filed 3–31–04; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA63

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Implementation of the Pharmacy Benefits Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 701 of the National Defense Authorization Act for Fiscal Year 2000. The rule establishes procedures for the inclusion of pharmaceutical agents on a uniform formulary based upon relative clinical effectiveness and cost effectiveness; establishes the cost-sharing requirements including a tiered co-payment structure for pharmaceutical agents based on their designation as a generic, formulary or non-formulary pharmaceutical agent; establishes procedures to assure the availability of pharmaceutical agents not included on the uniform formulary to eligible beneficiaries at the non-formulary tier; establishes procedures to receive pharmaceutical agents not included on the uniform formulary, but considered clinically necessary, under the same terms and conditions as an agent on the uniform formulary; establishes procedures to assure the availability of clinically appropriate non-formulary pharmaceutical agents to members of the uniformed services; establishes procedures for prior authorization when required; and establishes a Department of Defense Pharmacy and Therapeutics Committee (DoD P&TC) and a uniform formulary Beneficiary Advisory Panel. Other administrative amendments are also made to clarify specific policies that relate to the program.

DATES: This final rule is effective May 3, 2004.

ADDRESSES: Pharmacy Benefits Division, TRICARE Management Activity, Skyline Five, 5111 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: COLONEL William Davies, Director, Pharmacy Benefits Division, TRICARE Management Activity, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Changes

Section 701 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65), codified at Title 10, United States Code, Section 1074g, directs the Department to establish an effective, efficient, integrated pharmacy benefits program. The current prescription drug benefit under TRICARE includes the U.S. Food and Drug Administration (FDA) approved drugs and medicines that by United States law require a physician's or other authorized individual professional provider's prescription (acting within the scope of their license) that has been ordered or prescribed by them. The pharmacy benefits program does not include prescription drugs which are used in medical treatments or

procedures that are expressly excluded from the TRICARE benefit by statute or regulation.

II. Scope of the Program

The pharmacy benefits program will include a uniform formulary of pharmaceutical agents that will assure the availability of pharmaceutical agents in the complete range of therapeutic classes authorized under the current TRICARE prescription drug benefit. A therapeutic class is defined as a group of drugs that are similar in chemical structure, pharmacological effect, or clinical use. Pharmaceutical agents in each therapeutic class shall be selected for inclusion on the uniform formulary based upon the relative clinical effectiveness and cost effectiveness of the agents in such class. If a pharmaceutical agent in a therapeutic class is determined not to have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome compared to other drugs included on the uniform formulary, it may be classified as a non-formulary agent. If a pharmaceutical agent in a therapeutic class is not cost effective relative to other pharmaceutical agents in that therapeutic class, it may be classified as a non-formulary agent.

The pharmacy benefits program, which includes the uniform formulary and its associated tiered co-payment structure, is applicable to all of the uniformed services. Its geographical applicability is all 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In addition, if authorized by the Assistant Secretary of Defense (Health Affairs), the pharmacy benefits program may be implemented in areas outside the 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In such case, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to the pharmacy benefits program rules as may be appropriate to the areas involved.

III. Public Comments

The proposed rule was published in the **Federal Register** on Friday, April 12, 2002, (67 FR 17948) in which DoD proposed to implement its pharmacy benefits program and uniform formulary. Interested persons were invited to submit comments on DoD's proposed rule by June 11, 2002. We received more than 3,000 public comments with the majority concentrated in five general areas: the proposed non-formulary co-payment of $22; assurance that the uniform formulary will include a broad range of medications most often prescribed in each therapeutic class; procedures for documenting and approving clinical necessity for doctors should be streamlined; "grandfathering'' at current co-payments for patients already receiving a medication that may become non-formulary; and ensuring that providers have adequate educational materials and access to formulary lists.

In addition, other comments were received from organizations representing various medical fields or corporate entities regarding specific aspects of the proposed rule. A discussion of the more significant comments concerning DoD's proposed rule, and our responses to these comments, are set forth below.

A. Point of Clarification Concerning Availability of Non-Formulary Drugs

Public comments revealed the perception that "non-formulary'' drugs would not be available under the uniform formulary. That perception is incorrect. As stated in the proposed rule and as required by 10 U.S.C. 1074g(a)(5), we emphasize that drugs categorized as "non-formulary'' must be made available through at least one of our pharmaceutical venues. DoD will make non-formulary drugs available through the TRICARE Mail Order Pharmacy and retail pharmacies at the non-formulary co-payment.

B. Co-Payments

The most frequent public comment concerned the proposed $22 co-payment for the non-formulary tier of the uniform formulary. It was generally stated that "the jump from $9 to $22 for non-formulary drugs is excessively high and presents an undue financial burden upon all classes of beneficiaries.''

DoD was directed by 10 U.S.C. 1074g to establish an effective, efficient, and integrated pharmacy benefits program, to include a uniform formulary of pharmaceutical agents based upon relative clinical and cost effectiveness. DoD is authorized under 10 U.S.C. 1074g(a)(6) to establish cost-sharing requirements for generic, formulary, and non-formulary agents. The latitude given DoD in establishing non-formulary co-payments is limited by this section which states in pertinent part, "For non-formulary agents, cost-sharing *shall* be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.'' (emphasis added). Common industry practice is to either deny payment completely for non-formulary agents, or as in multi-tiered plans, have a difference in the cost-share between formulary and non-formulary agents that is enough to influence beneficiaries to select equally effective, less expensive medications. At the time the proposed rule was drafted, common industry practice was to establish a $12 to $15 differential between the non-formulary and formulary cost-shares. The proposed $22 co-payment creates a $13 differential and is within the 20% maximum cost-share limit established by law, based upon the average aggregate cost to the government for pharmaceutical agents that may be designated as non-formulary. The $22 co-payment is also significantly lower than commercial non-formulary co-payments that average $29 in retail pharmacies, and $34 to $57 in mail order pharmacies. (Source: Novartis Pharmacy Benefit Report: 2001 Facts and Figures). Within the TRICARE Mail Order Pharmacy, the proposed $22 co-payment for a 90 day supply of a non-formulary medication is even less than the formulary rate in the retail pharmacy network for a comparable 90 day supply (3 prescriptions at a $9 cost-share per prescription=$27 total) and is intended to influence beneficiary choice for mail order. Thus, the $22 non-formulary co-payment is in line with the commercial best practice business model, influencing beneficiary choice, while maintaining access to a broad range of pharmaceutical agents.

C. Formulary Range

The second most frequent comment concerned reassurance that the uniform formulary will include a broad range of frequently prescribed medications that offer a spectrum of choices within each therapeutic class, recognizing that the "lowest common denominator'' drug is not adequate to meet the health care needs of numerous beneficiaries. The Department is directed by 10 U.S.C. 1074g(a)(2)(A) to establish a "uniform formulary, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes.'' The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class. In considering the relative clinical effectiveness of pharmaceutical agents, the Director, TRICARE Management Activity, is required by 10 U.S.C. 1074g(a)(2)(B) to presume inclusion in a therapeutic class of a pharmaceutical agent, unless the DoD Pharmacy and Therapeutics Committee finds that a pharmaceutical

agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary. The DoD Pharmacy and Therapeutics Committee, comprised of physicians and pharmacists with clinical expertise, will conduct in-depth clinical and cost-effective analysis of medications within a therapeutic class. The DoD Pharmacy and Therapeutics Committee will recommend that an agent have a non-formulary status based on clinical effectiveness, only if the agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other drugs included on the uniform formulary. The Committee's recommendations shall be commented upon by the Beneficiary Advisory Panel, and the final decision will be made by the Director, TRICARE Management Activity (TMA). Those medications designated non-formulary will still be accessible through the mail order pharmacy and retail pharmacies at the non-formulary cost-share, and at the formulary cost-share for conditions of medical necessity.

D. Streamlining Medical Necessity Procedures

The third most frequent comment concerned assurances that procedures for documenting and determining "clinical necessity'' will be streamlined, without imposing unnecessary administrative procedures upon providers, patients, and pharmacists. Under both the TRICARE Mail Order Pharmacy program and the Request for Proposals for the TRICARE Retail Pharmacy contract, we have established streamlined processes that efficiently and accurately identify instances where it is clinically necessary for a beneficiary to use a non-formulary drug. We re-emphasized that beneficiaries may obtain non-formulary drugs without delay because the clinical necessity determination will, in most cases, be a retrospective review completed after the medication is dispensed. Under the TRICARE Mail Order Pharmacy Program, beneficiaries have the option of submitting evidence to support clinical necessity concurrently with their prescriptions. Under the pharmacy benefits program, clinical necessity establishes only the co-payment of a non-formulary medication for a beneficiary and does not impact access to medications.

E. Grandfathering Co-Payments

The fourth most frequent comment concerned the concept of "grandfathering'' co-pays at current levels for patients already receiving maintenance medications which subsequently may be designated as non-formulary when the uniform formulary is implemented.

Under 10 U.S.C. 1074g(a)(8), the"Secretary shall ensure that en eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before'' October 5, 1999 [the date of enactment of section 1074g] "and stabilized the medical condition of the beneficiary.'' Compliance with this directive is achieved in that access to pharmaceuticals designated as "non-formulary'' is preserved under this rule, though at the non-formulary tier. Where there is clinical necessity for the use of a non-formulary agent that is not otherwise excluded as a covered benefit, the drug or medicine will be provided at the same co-payment as a formulary agent. Clinical necessity for use of a non-formulary agent is established when: Use of the formulary agent is contraindicated; the patient is likely to experience or has experienced significant adverse effects from formulary agents; formulary agents result in therapeutic failure; the patient previously responded to a non-formulary agent and changing to a formulary agent would incur unacceptable clinical risk; or, there is no alternative formulary agent.

The government will apply the commercial business practice of establishing a transition period during which the formulary co-payment will apply to pharmaceuticals that were prescribed for a beneficiary prior to that pharmaceutical agent being designated as "non-formulary''. Transition periods shall be determined by the DoD Pharmacy and Therapeutics Committee and included with any recommendation of a pharmaceutical for "non-formulary'' status. The intent of this transition period is to allow sufficient time for education and communication of this formulary status change, enabling coordination between beneficiaries and providers on whether to submit documentation of clinical necessity, continue therapy at the non-formulary tier, or modify therapy. With these considerations, transition periods may vary by drug; however, will not be longer than 180 days from the final decision date but may be less.

F. Provider Education and Formulary Access

The fifth most frequent public comments stated that DoD must ensure doctors have educational materials on the program, uncomplicated and immediate access to formulary lists, and the ability to identify and fulfill clinical necessity documentation requirements in real time via the Internet. The Department will incorporate the communication of formulary information into TMA's extensive marketing and education program that employs both electronic and print media. Dissemination of information to beneficiaries, beneficiary advisory groups, providers, and TRICARE contractors will be coordinated through TMA's Communications and Customer Services Directorate.

G. Financial Responsibility

A managed care support contractor of the TRICARE program inquired as to the status of the requirement under 10 U.S.C. 1074g(d) that in the operation of the pharmacy benefits program the Secretary of Defense assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

TRICARE, in its next generation of contracts, has announced that it is carving out from the managed care support contracts the requirement to provide retail pharmacy services. Managed care support contractors have had no requirement to provide mail order pharmacy services. Mail order pharmacy services were provided under a single, separate contract, the TRICARE National Mail Order Pharmacy Program, and are being provided now under a similar arrangement with the TRICARE Mail Order Pharmacy Program. The TRICARE Retail Pharmacy solicitation is structured so that the Government, with overall fiscal responsibility for the health care of eligible beneficiaries, bears its share of the cost of prescriptions as a Federal procurement.

H. Clinical Effectiveness and Cost Effectiveness

As explained in the preamble to the proposed rule, it is presumed that pharmaceutical agents should be included on the uniform formulary unless the Pharmacy and Therapeutics Committee finds by a majority vote that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety,

effectiveness, or clinical outcome over other pharmaceutical agents included on the uniform formulary. The DoD Pharmacy and Therapeutics Committee will exercise collective professional judgment by considering pertinent information from a variety of sources. The Committee will evaluate the relative clinical effectiveness of pharmaceutical agents within a therapeutic class by considering information about their safety, effectiveness, and clinical outcome. Information considered by the committee may include but is not limited to: FDA approved and other studied indications; pharmacology; pharmacokinetics; contraindications: warnings/precautions; incidence and severity of adverse effects; drug to drug, drug to food, and drug to disease interactions; availability, dosing, and method of administration; epidemiology and relevant risk factors for diseases/conditions in which the drugs are used; and concomitant therapies; results of safety and efficacy studies; results of effectiveness/clinical outcomes studies; and results of meta-analyses.

In considering the relative cost effectiveness of pharmaceutical agents in a therapeutic class authorized under the TRICARE pharmacy benefit, the DoD Pharmacy and Therapeutics Committee shall evaluate the costs of the agent in relation to the safety, effectiveness, and clinical outcomes of other agents in the class. Information considered by the Committee concerning the relative cost effectiveness of the pharmaceutical agent may include but is not limited to: cost of the drug to the Government; impact on overall medical resource utilization and costs, cost-efficacy studies; cost-effectiveness studies; cross-sectional or retrospective economic evaluations; pharmacoeconomic models; patent expiration dates; clinical practice guideline recommendations; and existence of existing blanket purchase agreements, incentive price agreements, or contracts. Based on its assessment of the relative clinical and cost effectiveness of agents within a therapeutic class, the DoD Pharmacy and Therapeutics Committee will recommend that an agent either be included on the uniform formulary or designated as non-formulary. The DoD Pharmacy and Therapeutics Committee's recommendation will be determined by a majority vote.

A pharmaceutical company stated its belief that the broadly drafted definition of a "therapeutic class'' in the rule would make it difficult for beneficiaries to obtain access to their varied pharmaceutical needs because the uniform formulary may cover a limited number of drugs per therapeutic class. Therapeutic class is defined as a group of drugs that are similar in chemical structure, pharmacological effect, or clinical use. The pharmaceutical company suggested the following definition: "a group of covered outpatient drugs used to treat the same spectrum of disorders with similar patient outcomes, similar effects on all relevant drug receptors or other biological targets, and similar tolerability throughout their clinically accepted dosing ranges across all relevant patient populations.'' The narrow definition proposed by the pharmaceutical company would result in an extremely large number of therapeutic classes. Many of the classes would contain a single drug, or at most, very few drugs. This definition would obviously minimize the number of drugs that could possibly be designated as non-formulary. The definition in the rule is consistent with commonly accepted definitions of a therapeutic class. We are confident that, given the definition of a therapeutic class in the rule, the uniform formulary will include a sufficient number of pharmaceuticals to meet the clinical needs of DoD beneficiaries.

A pharmacy association suggested adding "and/or clinical use'' to the definition of therapeutic class. We concur with that recommendation and have made that change.

Comments were received from a pharmaceutical manufacturer concerning the date that new drugs approved by the Food and Drug Administration (FDA) will become available to beneficiaries under the pharmacy benefits program. The manufacturer recommended all new drugs be automatically included on the uniform formulary if it is in a therapeutic class that has not been reviewed; or if a new drug is in a class that has already been reviewed, the new agent shall be evaluated within six months of the market date. Currently, new drugs approved by the FDA are available immediately to our beneficiaries in retail pharmacies. Their availability in the TRICARE Mail Order Program is contingent upon a decision by the DoD Pharmacy and Therapeutics Committee. Their availability in military medical treatment facilities (MTFs) is contingent upon either the individual MTF placing them on its formulary or the DoD Pharmacy and Therapeutics Committee placing them on the Basic Core Formulary, thus mandating their inclusion on every MTF formulary.

Under 10 U.S.C. 1074g, DoD has the option of making a new drug available immediately in retail pharmacies at the formulary cost-share tier, or delay its availability until it is evaluated by the Pharmacy and Therapeutics Committee for placement in either the formulary or non-formulary cost-share tier. However, for any drugs newly approved by the Food and Drug Administration, the Pharmacy and Therapeutics Committee is required under 10 U.S.C. 1074g(b)(2) to consider their inclusion on the uniform formulary. Under 10 U.S.C. 1074g(a)(2)(B), it is presumed that pharmaceutical agents should be included on the uniform formulary unless the Pharmacy and Therapeutics Committee finds by a majority vote that a pharmaceutical agent does not have significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other pharmaceutical agents included on the uniform formulary. The department will continue with its current policy, and except for drugs for excluded benefits, new drugs approved by the FDA will automatically be included on the uniform formulary at the formulary cost-share tier. Newly approved FDA drugs will normally by reviewed at the next scheduled Pharmacy and Therapeutics Committee meeting for evaluation of the drug's clinical and cost effectiveness in comparison to other drugs in the therapeutic class.

A pharmaceutical company stated its belief that the rule should require the Pharmacy and Therapeutics Committee to consider certain acknowledged sources of reliable clinical information when evaluating drugs within a therapeutic class (*e.g.,* clinical studies used for FDA approval, drug compendia information and peer-reviewed literature). The pharmaceutical company also stated that the rule should require the Committee to consult with independent medical specialists. The rule allows the Committee to consider all the sources of clinical information—including independent medical specialists—suggested by the pharmaceutical company. Rather than having the rule dictate the specific information sources that must be used in all circumstances, we believe it is more appropriate, as well as consistent with the statute and industry practice, to rely on the collective professional judgment of the Committee members to determine which information sources need to be used in order to most effectively evaluate the clinical and cost effectiveness.

A pharmaceutical company noted that the rule does not make any reference to the impact on quality of life when making formulary decisions. A pharmaceutical manufacturer

association stated its opinion that in determining clinical effectiveness, the Secretary must add "quality of life'' and "compliance'' as factors to consider when determining the therapeutic advantage of one drug over another. In 32 CFR 199.21(e)(1)(iii) it states that the Pharmacy and Therapeutics Committee will evaluate the relative clinical effectiveness of drugs within a therapeutic class by considering information about their safety, effectiveness, and clinical outcome. In 32 CFR 199.21(e)(1)(iv) it goes on to list various factors that the Committee may consider, but is not limited to considering. Clinical effectiveness is a composite of many factors. It is not our intent to include in the rule an exhaustive list of all factors that could potentially affect the clinical effectiveness of pharmaceutical agents. Although quality of life and compliance are not explicitly identified in the rule, the rule does not preclude or require the Committee to consider such information in evaluating the relative clinical effectiveness of pharmaceutical agents in a therapeutic class. We will rely on the collective professional judgment of the Committee to determine if relevant information on quality of life and compliance are available and useful for evaluating the relative clinical effectiveness of particular pharmaceutical agents.

A pharmaceutical manufacturer association stated that in determining "cost effectiveness'' the rule must include detailed information as to how the Pharmacy and Therapeutics Committee will factor in the value of saved lives and improved quality of life. In 32 CFR 199.21(e)(2)(ii) it lists information the Committee may consider, but is not limited to considering in evaluating the relative cost effectiveness of drugs in a therapeutic class. Although the value of saved lives and improved quality of life are not explicitly identified in the rule, the rule does not preclude the Committee from considering such information in evaluating the relative cost effectiveness of pharmaceutical agents in a therapeutic class. We will rely on the collective professional judgment of the Committee to determine if relevant information on the value of lives saved and improved quality of life are available and useful for evaluating the relative cost effectiveness of pharmaceutical agents. However, significant differences in clinical outcomes will obviously be a major focus of the Committee's actions.

A pharmaceutical company questioned how relative price is weighed against relative effectiveness. The rule states that the Committee will evaluate the costs of pharmaceutical agents in relation to the safety, effectiveness, and clinical outcomes of the agents in the therapeutic class.

A pharmaceutical company commented that the rule should be clarified to allow for cost effectiveness consideration only after the Pharmacy and Therapeutics Committee has determined clinical effectiveness is firmly established. Under 10 U.S.C. 1074g(a)(2)(A), the selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class. Like the statute, (10 U.S.C. 1074g(a)(2)(B) for clinical effectiveness and 1074g(a)(2)C) for cost effectiveness), the rule (32 CFR 199.21(a)(3)(ii)) specifies a two-step process that will evaluate clinical effectiveness first, then cost effectiveness second, and base a formulary status recommendation based upon both. Before making a recommendation that a therapeutic agent be classified as a non-formulary agent, both clinical effectiveness and cost effectiveness will be evaluated. However, in making the recommendation, a determination that an agent is either not as clinically effective or not as cost effective as other agents in the class, will be sufficient to support the recommendation that the agent will not be added to the uniform formulary.

A professional organization stated an opinion that § 199.21(a)(3)(ii) of the proposed rule, setting forth the standard for designating a pharmaceutical agent as non-formulary is unclear and potentially inconsistent with section 1074g(a)(2)(A) of the governing statute, which provides that the decision as to whether an agent in a particular therapeutic class is included on the uniform formulary will be based on "the relative clinical and cost effectiveness of the agents in the class.'' We disagree that the standard in the rule is either unclear or inconsistent with the statute. We concur with the commenter that the statutory provision envisions a test that takes into account both clinical effectiveness and cost. In 32 CFR 199.21(a)(3)(ii), it states: "If a pharmaceutical agent in a therapeutic class is determined by the Pharmacy and Therapeutics Committee not to have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other pharmaceutical agents included on the uniform formulary, it may be classified as a non-formulary agent. In addition, if the evaluation of the Pharmacy and Therapeutic Committee concludes that a pharmaceutical agent in a therapeutic class is not cost effective relative to other pharmaceutical agents in a therapeutic class, considering costs, safety, effectiveness, and clinical outcomes, it may be classified as a non-formulary agent.'' The rule is simply stating, in accordance with section 1074g(a)(2)(A) that "selection for inclusion on the uniform formulary . . . shall be based on the relative clinical and cost effectiveness of the agents in such [therapeutic] class.'' If it is either not relatively as clinically effective or cost effective as other agents in such class, the agent will not be considered as clinically effective and cost effective as other agents in such class.

I. Evaluation of Pharmaceutical Agents for Determinations Regarding Inclusion on the Uniform Formulary

As explained in the proposed rule, the DoD Pharmacy and Therapeutics Committee will periodically evaluate or re-evaluate individual drugs and/or drug classes for determinations regarding inclusion or continuation on the uniform formulary. Evaluation or re-evaluation of individual drugs or drug classes may be prompted by a variety of circumstances that may include but are not limited to: approval of a new drug by the FDA; approval of a new indication for an existing drug; changes in the clinical use of existing drugs; new information concerning the safety, effectiveness or clinical outcomes of existing drugs; price changes; shifts in market share; scheduled review of a therapeutic class; and requests from Pharmacy and Therapeutics Committee members, military treatment facilities, or other Military Health System officials.

A pharmaceutical company questioned how new Food and Drug Administration (FDA) approved drugs will be evaluated. Under 10 U.S.C. 1074g(b)(2), the Committee is required to meet quarterly to consider for inclusion on the uniform formulary any new drugs newly approved by the FDA. The Committee will evaluate the clinical effectiveness and cost effectiveness as outlined in the rule. Comments were received from pharmaceutical manufacturers and pharmaceutical associations on evaluation of pharmaceutical agents for determinations regarding inclusion on the uniform formulary. Evaluation or revaluations may be prompted by a variety of circumstances that may include but are not limited to: approval of a new drug by the FDA; approval of a new indication for an existing drug;

changes in the clinical use of existing drugs; new information concerning the safety, effectiveness or clinical outcomes of existing drugs; price changes; shift in market share; scheduled review of a therapeutic class; and requests from Pharmacy and Therapeutics Committee members, military treatment facilities, or other Military Health System officials.

J. Uniform Formulary at Military Treatment Facilities (MTFs)

As discussed in the proposed rule, pharmaceutical agents included on the uniform formulary shall be available through medical treatment facilities of the uniformed services, consistent with the scope of health care services offered in such facilities. The Basic Core Formulary (BCF) is a subset of the uniform formulary and is a mandatory component of all MTF pharmacy formularies. The BCF contains the minimum set of drugs that each MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Additions to individual MTF formularies are determined by local Pharmacy and Therapeutics Committees based upon the scope of health care services provided. However, pharmaceutical agents that are designated as non-formulary on the uniform formulary shall not be included on an MTF pharmacy formulary. All drugs on the MTF formulary must be available to all beneficiaries. There are no co-payments or cost-shares for any beneficiaries utilizing MTF pharmacies.

A pharmaceutical association comments on the importance of standardizing the formulary process within the military treatment facilities (MTFs). Under 10 U.S.C. 1074g(a)(2)(E)(i), pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through facilities of the uniformed services, consistent with the scope of health care services offered in such facilities. Although the formulary process in the MTF Pharmacy and Therapeutics Committees is similar to the process outlined in the statute and the rule for the DoD Pharmacy and Therapeutics Committee, neither govern the procedures of the MTF Pharmacy and Therapeutics Committees. Each MTF must evaluate the scope of practice of the facility and determine which drugs in addition to those on the Basic Core Formulary, which is required for all MTFs, should be on that MTF's formulary.

The same association commented that the rule does not outline the steps an MTF must take to determine clinical necessity for non-formulary items. There are three issues associated with this comment. First, not all points of service or venues are required to have non-formulary pharmaceutical agents available to beneficiaries. Under 10 U.S.C. 1074g(a)(5), non-formulary agents are required to be available only through one of the venues described in 10 U.S.C. 1074g(a)(2)(E), specifically, MTFs, retail pharmacies, or the TRICARE Mail Order Pharmacy program. A higher cost-share is authorized for non-formulary pharmaceutical agents in the venue where they are offered. DoD has elected to make non-formulary pharmaceutical agents available at the non-formulary tier cost-shares described in this rule in all venues, except for the MTFs. Second, in those points of service or venues where non-formulary tier pharmaceutical agents are offered, under 10 U.S.C. 1074g(a)(7), DoD is required to establish procedures for beneficiaries to receive pharmaceutical agents at the formulary tier cost-share that are not included on the uniform formulary (*i.e.,* non-formulary), if the beneficiary establishes that the non-formulary pharmaceutical agent, as opposed to the formulary tier pharmaceutical agent, is clinically necessary for the beneficiary. Procedures for establishing clinical necessity for prescriptions presented at retail pharmacies and the TRICARE Mail Order Program are described in 32 CFR 199.21(h)(3). If clinical necessity is established, non-formulary tier pharmaceutical agents are provided to the beneficiary at the formulary tier cost-share. Third, non-formulary tier pharmaceutical agents will not be routinely available in the MTFs like they are in the other venues. These agents can be obtained in all other venues with payment of the non-formulary tier cost-share, whereas if available in the MTFs, they would be obtained without payment of the higher cost-share, because no cost-shares are charged at the MTFs. Although these agents will not routinely be available in the MTFs, DoD has decided to make non-formulary tier pharmaceutical agents available in the MTFs when medical necessity for the agent is established. Under 32 CFR 199.21(h)(3)(ii) we now state, "Although not a beneficiary entitlement, non-formulary pharmaceutical agents may be made available to eligible covered beneficiaries for prescriptions approved through the non-formulary special order process of the MTFs that validates the medical necessity for the use of the non-formulary pharmaceutical agent.''

A retiree association comments that beneficiaries should be notified regarding changes to the MTFs' Basic Core Formulary. We will include all formulary changes in the marketing/education efforts described previously.

A retiree association commented that the rule should include a statement regarding quantities of medications available from MTFs, just as it does concerning the quantities available from the retail networks and mail order pharmacy. Quantity limits in retail pharmacies and the TRICARE Mail Order Program are discussed in § 199.21(i)(2) under the heading of "Cost-sharing amounts.'' The purpose of this subsection is to describe the cost-share required in each venue, and the maximum quantity of a prescribed drug that may be obtained for that cost-share. The rule clearly states that there is no cost-share for pharmaceutical agents obtained from an MTF. Because there is no cost-share in the MTF, regardless of the quantity dispensed, it is unnecessary to describe the quantity limit that may apply at a MTF. Omitting any reference to quantity limits at the MTF also allows appropriate flexibility to change policies as necessary to meet operational requirements in the MTFs, without having to revise the Code of Federal Regulations.

A beneficiary advocacy organization requested assurance that the Basic Core Formulary at MTFs will be as robust as possible to provide a cost-effective distribution channel for beneficiaries. MTF pharmacies are the least costly point of service for the beneficiary. The Basic Core Formulary as stated in 199.21(h)(2)(ii) "contains the minimum set of drugs that each MTF pharmacy must have on its formulary to support the primary care scope of practice for the Primary Care Manager enrollment sites.'' To the extent appropriate based on the scope of practice at each MTF, the actual formulary in use at the MTF will reflect the needs of the MTF's patients. We believe the result will be reasonable access through MTF pharmacies to drugs needed by MTF patients.

K. Prior Authorizations

As noted in the proposed rule, selected pharmaceutical agents may be subject to prior authorization or utilization review requirements to assure medical necessity, clinical appropriateness and/or cost effectiveness. The Pharmacy and Therapeutics Committee will assess the need to prior authorize a given agent by considering the relative clinical and cost effectiveness of agents within a therapeutic class. Agents that require

prior authorization will be identified by a majority vote of the Pharmacy and Therapeutics Committee. The Pharmacy and Therapeutics Committee will establish the prior authorization criteria for a given agent.

A medical association stated its opinion that the rule should state the time frame to turn around a prior authorization denial and that the reasons for the denial must be documented. Similar to other sections of Part 199, the rule specifies that the Director, TRICARE Management Activity, may issue policies, procedures, instructions, guidelines, standards and/or criteria to implement this requirement. Our goal is to efficiently, accurately, and promptly process prior authorization requests. Our mail order and retail pharmacy services contracts are structured to meet these goals and ensure that beneficiaries are advised of their right to appeal.

A medical association stated the opinion that pharmaceutical agents can not be subject to prior authorization criteria that apply in all circumstances. We disagree. There are similarities but also differences between prior authorization and clinical necessity. Prior authorization may be required under § 199.21(k) when considering the relative clinical and cost effectiveness of agents within a therapeutic class, and will require the establishment of prior authorization criteria. For example, some drugs should not be used as the first line of therapy. In those circumstances, it may be appropriate to require prior authorization to ensure medically appropriate care is being given by use of the first line therapy before the second line is used.

A TRICARE managed care support contractor asked if a pharmaceutical agent did not previously require prior authorization, but the DoD Pharmacy and Therapeutics Committee makes a decision that it should, will affected beneficiaries be notified in writing of the new requirement? Also, will affected beneficiaries be "grandfathered'' long enough for them to obtain a letter of medical necessity from the prescribing physician? We intend to apply the commercial business practice of providing an implementation time period that applies to pharmaceuticals that were prescribed prior to that agent requiring a prior authorization. Transition periods will be recommended by the DoD Pharmacy and Therapeutics Committee and will be included with any recommendation that a pharmaceutical require prior authorization. The intent of the transition period is to allow sufficient time for education and communication of this change enabling coordination between beneficiaries and providers on whether to continue the therapy or modify the therapy. We will use the same methods of education and communication previously discussed.

A pharmaceutical company stated that the rule does not identify the prior authorization criteria that will be established. The government will rely on the collective professional judgment of the DoD Pharmacy and Therapeutics Committee to identify both the pharmaceutical agents that require prior authorization and the criteria that apply to any particular agent.

L. Cost-Sharing Requirements

The proposed rule explained that active duty members do not pay a cost-share for prescription drugs. Cost-sharing requirements for all other beneficiaries will be based upon the pharmaceutical agent's classification on the uniform formulary, that is, generic, formulary, or non-formulary and the point of service, that is, MTF, retail network pharmacy, retail non-network pharmacy, or the TRICARE Mail Order Pharmacy (TMOP), from which the agent is acquired. TRICARE Prime point of service charges still apply to the pharmacy benefits program.

There is no co-pay for pharmaceutical agents obtained from a military treatment facility.

For pharmaceutical agents obtained from a retail network pharmacy there is a $9.00 co-pay per prescription for up to a 30-day supply of a formulary agent, a $3.00 co-pay per prescription for up to a 30-day supply of a generic agent, and a $22.00 co-pay per prescription for up to a 30-day supply of a non-formulary agent.

For formulary and generic pharmaceutical agents obtained from a retail non-network pharmacy there is a 20 percent or $9.00 co-pay (whichever is greater) per prescription for up to a 30-day supply of the pharmaceutical agent.

For non-formulary pharmaceutical agents obtained from a retail non-network pharmacy there is a 20 percent or $22.00 co-pay (whichever is greater) per prescription for up to a 30-day supply of the pharmaceutical agent.

For pharmaceutical agents obtained under the TMOP program there is a $9.00 co-pay per prescription for up to a 90-day supply of a formulary agent, a $3.00 co-pay per prescription for up to a 90-day supply of a generic agent, and a $22.00 co-pay per prescription for up to a 90-day supply of a non-formulary agent.

A point of service cost-share of 50 percent applies in lieu of the 20 percent co-pay for TRICARE Prime beneficiaries who obtain prescriptions from retail non-network pharmacies.

Except as provided below, for prescription drugs acquired by TRICARE Standard beneficiaries from retail non-network pharmacies, beneficiaries are subject to the $150.00 per individual or $300.00 maximum per family annual fiscal year deductible.

Under TRICARE Standard, dependents of members of the uniformed services whose pay grade is E–4 or below are subject to the $50.00 per individual or $100.00 maximum per family annual fiscal year deductible.

The TRICARE catastrophic loss limits apply to pharmacy benefits. For dependents of active duty members, the maximum family liability is $1,000 for cost-shares and deductibles based on allowable charges for TRICARE Basic Program services and supplies received in a fiscal year. For all other categories of beneficiary families, the maximum family liability is $3,000 in a fiscal year.

A comment was received from a pharmaceutical association stating it does not support incentives to encourage populations to obtain their pharmacy services from mail order over retail pharmacy, and that there is little evidence to suggest mail order saves money. The DoD co-payment structure is established to encourage use of the most economical venue to the Department. Prescriptions filled under the TRICARE Mail Order Pharmacy Program are currently a more cost effective venue then a retail pharmacy for the Department. As the Department implements the national retail pharmacy contract, the Department may re-evaluate this policy.

A comment was received from a commercial group recommending that the enrollment year deductible for outpatient claims of $300 per individual; $600 per family under TRICARE Prime be included with the statement that "a point of service cost-share of 50 percent (50%) applies in lieu of the 20 percent (20%) co-payment for TRICARE Prime beneficiaries who obtain prescriptions from retail non-network pharmacies.'' This clarification of deductibles under TRICARE Prime has been included in the final rule.

A question was received from a commercial group regarding pharmaceutical agents obtained under the TMOP program where there is a: "$22.00 co-payment for up to a 90-day supply of a non-formulary pharmaceutical agent.'' The question was that in the event the Government has a contract for a preferred agent within the therapeutic class, will the non-preferred agent be designated as

non-formulary and would it be available from the TMOP with the $22.00 co-pay for up to a 90-day supply? Whether the non-contracted, non-preferred agent is designated as a formulary or non-formulary agent will be based upon the relative clinical and cost effectiveness of the agent in comparison to other agents in the class. Non-formulary agents will be available through the TRICARE Mail Order Pharmacy Program at the $22.00 co-payment for up to a 90 day supply.

A question was received from a commercial group asking to which tier will compounded prescriptions be assigned. Compounded prescriptions will be subject to the same process of evaluation as other pharmaceutical agents under the uniform formulary. They will fall under the non-formulary tier only as determined by the DoD Pharmacy and Therapeutics Committee.

A military association submitted a comment stating that until a national retail pharmacy contract is implemented, beneficiaries who are under the age of 65 and who need to purchase drugs while traveling out of their region must pay non-network prices even when using a retail network pharmacy. The association asserted that procedures need to be in place between the implementation of the uniform formulary and the implementation of the new retail pharmacy contract that will allow beneficiaries obtaining prescriptions out of region to be able to pay network prices when using a network pharmacy. The national retail pharmacy contract will assure portability, in that a network pharmacy will be a part of a national, as opposed to regional, pharmacy network. Implementation of the uniform formulary has nothing to do with portability of the pharmacy benefit.

A comment was received from a military association stating provisions should be spelled out to allow nursing home patients to pay retail network rates even when the nursing home's pharmaceutical supplier is not a network provider. Beneficiary cost-shares are based on point of service and formulary status of the pharmaceutical agent, and not on unique categories of beneficiaries of their residence. The Department has not made any changes based on this comment.

A foundation stated its opinion that brand names should be in the lowest co-payment tier. A primary objective of tiered co-pays is to encourage beneficiaries to use the most cost-effective pharmaceutical agents that will satisfy their clinical needs. Generic drugs are placed in the lowest co-pay tier because they are generally much less expensive than brand name drugs. It would be contrary to the underlying premise of a three tier formulary to place more expensive brand name drugs in the lowest co-pay tier.

M. Determination of Generic Drug Classification Under the Pharmacy Benefits Program

As explained in the proposed rule, the designation of a drug as a generic for the purpose of applying cost-shares at the generic rate, will be determined through the use of standard pharmaceutical references as part of commercial best business practices. In considering the relative cost effectiveness of pharmaceutical agents in a therapeutic class, the Pharmacy and Therapeutics Committee may consider the existence of blanket purchase agreements, incentive price agreements, or contracts. The existence of these agreements or contracts may result in situations where a brand drug is the most cost effective pharmaceutical agent for the Government to purchase, even more cost effective than generic agents. When this circumstance occurs, the Pharmacy and Therapeutics Committee may designate that the branded drug cost-share be the same as the lower generic drug cost-share when the branded drug is selected as the preferred agent over generic drugs because it is more cost effective for the Government. This will assure that the beneficiary is not penalized when brand products are competed and selected as the formula pharmaceutical agent over generic products following a contracting initiative.

Retiree groups commented that beneficiaries should be notified if a brand-name drug is the "preferred agent'' even when a generic exists and the brand-name can be obtained at the lower $3 co-payment. The Department will incorporate the communication of formulary and co-pay information into TMA's extensive marketing and education program that employs both electronic and print media. Dissemination of information to beneficiaries, beneficiary advisory groups, providers, and TRICARE contractors will be coordinated through TMA's Communications and Customer Services Directorate.

Comments received from a current managed care support contractor recommended that brand-name products made available at the generic co-payment rate apply only to TMOP since government pricing is available at TMOP. Likewise, the contractor commented that currently the government is not at risk for the retail benefit and should not make decisions based on prices that do not apply in the retail sector. This comment is counter to the government's intent to implement a uniform, consistent, and equitable benefit. Overall cost effectiveness evaluations will include price considerations for all venues, since the Government if financially responsible for the retail benefit with the carve-out of the TRICARE retail pharmacy benefit from the managed care support contracts.

A comment was received asking for confirmation that "all multi-source'' brand prescription drugs that have a generic equivalent will be classified as non-formulary with a $22 co-payment. This final rule re-instates the mandatory generic substitution policy in situations where a generic equivalent is available. Therefore, in the situation described above, the branded product would not be covered unless medical necessity is validated, and then the formulary cost-share would apply. Additionally, as stated in § 199.21(j)(3), the Pharmacy and Therapeutics Committee may consider the existence of blanket purchase agreements, incentive price agreements, or contracts when considering the relative cost effectiveness of pharmaceutical agents. The existence of these agreements or contracts may result in situations where a brand drug is the most cost effective pharmaceutical agent for the Government to purchase, even more cost effective than generic equivalents. When this circumstance occurs, the Pharmacy and Therapeutics Committee may designate that the brand drug cost-share be the same as the lower generic cost-share. This will assure that the beneficiary is not penalized when brand products are competed and selected as the formulary pharmaceutical agent over generic products.

A managed care support contractor of the TRICARE program asked for confirmation that all generic drugs listed with an "A'' rating in the current Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book), published by the FDA, and generic equivalents of grandfather or Drug Efficacy Study Implementation (DESI) category drugs (with the exception of prescription drugs for medical conditions that are expressly excluded from the TRICARE benefit by statute or regulation) are included in the uniform formulary and subject to the $3.00 co-payment per prescription for up to a 30-day supply from retail network pharmacies and $3.00 co-payment per prescription for up to a 90-day supply from the TMOP (except active duty members of the uniformed services do not pay cost-shares for TRICARE covered pharmaceutical

agents). Under the proposed rule it is presumed that pharmaceutical agents should be included on the uniform formulary unless the Pharmacy and Therapeutics Committee determines that an agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other pharmaceutical agents included on the uniform formulary. This is consistent with 10 U.S.C. 1074g(a)(2)(D) which states: "no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee.'' Generic pharmaceutical agents that are included on the uniform formulary will be subject to the $3.00 co-payment. Generic agents that are categorized as "non-formulary'' would be subject to the $22 non-formulary co-payment.

N. Availability of Clinically Appropriate Non-Formulary Pharmaceutical Agents to Members of the Uniformed Services

The proposed rule noted that the Pharmacy Benefits Program is required to assure the availability of clinically appropriate pharmaceutical agents to members of the uniformed services, including where appropriate, agents not included on the uniform formulary. MTFs shall establish procedures to evaluate the clinical appropriateness of prescriptions written for members of the uniformed services for pharmaceutical agents not included on the uniform formulary. If it is determined that the prescription is clinically appropriate, the MTF will provide the pharmaceutical agent to the member. TRICARE will conduct an evaluation for clinical appropriateness when a member presents a prescription for a non-formulary pharmaceutical agent to a network or non-network pharmacy or the TMOP.

A commerical group recommended the statement that "TRICARE will conduct an evaluation for clincal appropriateness when a member presents a prescription for a non-formulary pharmaceutical agent to a network or non-network pharmacy'' be changed to read: "The TRICARE contractor (or servicing TRICARE contractor) will conduct an evaluation for clinical appropriateness when a member presents a perscription for a non-formulary pharmaceutical agent to a network or non-network pharmacy.'' Under 10 U.S.C. 1074g(a)(7), the Department bears the responsibility for establishing procedures for beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary (i.e., non-formulary agents), when clinical necessity is established. The rule reflects this fact, and although the Department may choose to implement this through the use of a contractor, the rule should not require the Department to use one. Therefore, the Department does not concur with the suggestion.

O. Availability of Non-Formulary Pharmaceutical Agents to Eligible Covered Beneficiaries

As explained in the proposed rule, non-formulary pharmaceutical agents will be available to eligible beneficiaries through the retail network pharmacies and the TMOP at the non-formulary co-payment of $22.00 per prescription.

Non-formulary pharmaceutical agents will be available to eligible beneficiaries through the retail non-network pharmacies at the non-formulary co-payment of 20 percent or $22.00, whichever is greater, per prescription.

Non-formulary pharmaceutical agents will be available to eligible covered beneficiaries through the MTF pharmacies only for prescriptions approved through the non-formulary special order process that validates the clinical necessity for use of the non-formulary pharmaceutical agent.

Comments from pharmaceutical industry members and a current managed care contractor asked for clarification concerning "grandfathering'' certain medications. Where there is clinical necessity for the use of a non-formulary agent that is not otherwise excluded as a covered benefit, the drug or medicine will be provided at the same co-payment as a formulary agent. clinical necessity for use of a non-formulary agent is established when: Use of the formulary agent is contraindicated; the patient experiences or is likely to experience significant adverse effects from formulary agents; formulary agents result in therapeutic failure; the patient previously responded to a non-formulary agent and changing to a formulary agent would incur unacceptable clinical risk; or, there is no alternative formulary agent. As previously discussed, the rule requires a specific transition period be recommended by the DoD Pharmacy and Therapeutics Committee for any pharmaceutical agent (including maintenance medications) that was previously a formulary, as opposed to non-formulary drug.

P. Reduction of Co-Payment for Cases of Clinical Necessity

As explained in the proposed rule, non-formulary pharmaceutical agents will be available to eligible covered beneficiaries through the retail network and non-network pharmacies at the same co-payment as a formulary pharmaceutical agent in situations of documented clinical necessity. In the proposed rule it stated a clinical necessity to use a non-formulary drug may exist when either: The use of formulary agents is contraindicated; the patient experiences significant adverse effects from formulary agents; formulary agents result in therapeutic failure; the patient previously responded to a non-formulary agent and changing to a formulary agent would incur unacceptable clinical risk; or there is no alternative agent on the formulary. A voluntary organization for a specific disease proposed that § 199.21(i)(3)(ii)(B) be amended as follows: "The patient experiences or is likely to experience significant adverse effects from formulary agents. This would expressly allow the view and professional judgment of the prescribing clinician to be considered.'' The commenter also propose § 199.21(i)(3)(ii)(C) be amended to read, "Formulary agents result in therapeutic failure or in the reasonable judgment of the clinician would be expected to result in therapeutic failure.'' We concur that the likelihood of adverse events or therapeutic failure, with appropriate documentation, could be considered when establishing medical necessity. Although we have not used the exact wording suggested by the voluntary organization, the rule has been modified to convey the intent.

For prescriptions submitted to the TMOP, information to justify the clinical necessity for use of a non-formulary agent should be submitted with the prescription. The beneficiary may also submit information to justify the clinical necessity for use of a non-formulary agent to the TMOP after the prescription has been filled. If clinical necessity for use of a non-formulary agent is validated, then the patient will receive a refund for the co-payment differential. For prescriptions submitted to a retail network pharmacy, the beneficiary will submit information to justify the clinical necessity for use of a non-formulary agent to the servicing TRICARE contractor and request a refund for the difference in the co-payment between the formulary and non-formulary pharmaceutical agent. Determinations of the clinical necessity for use of a non-formulary agent will undergo a peer review.

If the request for the difference is denied, either the beneficiary or provider may appeal the decision to the extent allowed and consistent with the procedures under § 199.10.

A pharmaceutical manufacturer association suggested incorporation of a sixth prong that would allow beneficiaries to demonstrate clinical necessity by showing that "a non-formulary agent is expected to have a therapeutic advantage'' for a particular patient. Under 32 CFR 199.21(i)(3)(ii)(A)–(E) we list five circumstances that would demonstrate a clinical necessity to use a non-formulary agent. For an agent to become a non-formulary agent, the decision would have already been made under 10 U.S.C. 1074g(a)(2)(B) that the agent "does not have a significant, clinically meaningful therapeutic advantage'' over formulary agents. Based on this, a clinical opinion that a non-formulary agent is "expected'' to offer a therapeutic advantage, without any showing of a probable problem with the formulary agent, is not sufficient to establish clinical necessity. There has to be a showing that use of a formulary agent in the therapeutic class is problematic in some objective manner before clinical necessity for purposes of obtaining the drug at the formulary cost-share is established. If the suggested circumstance for establishing clinical necessity were incorporated into the rule, a prescriber could simply state such an expectation about any non-formulary drug, which would essentially render the non-formulary category meaningless. We do not believe this would be consistent with the statutory charge that DoD "establish an effective, efficient, integrated pharmacy benefits program.''

A pharmaceutical company suggested that the rule should state that a beneficiary or provider be able to demonstrate the need for a non-formulary drug without having to demonstrate a prior failure of a formulary drug, *i.e.* should not have to have a "fail first'' before using a non-formulary drug. Therapeutic failure on a formulary drug is but one of the five circumstances listed in the rule that may demonstrate clinical necessity to use a non-formulary drug, and is not required for any of the other four conditions to apply.

A military association stated its opinion that the term "significant adverse effects'' must be better defined in the rule since adverse side effects from a preferred drug can be a reason for obtaining a non-formulary drug at a formulary price. The determination that an adverse effect experienced by a particular patient is "significant enough'' to justify the clinical necessity to use a non-formulary drug is a medical judgment based on the specific circumstances for a specific patient. It is impossible to spell out a definition or set of criteria in a regulation that will lead to such a determination.

A professional association expressed pleasure that DoD proposed adoption of a three tiered cost-share design to make the patient and the provider aware of the cost implications of their choice in drugs. The association questions whether it is a wise move for DoD to allow beneficiaries to obtain non-formulary tier drugs at the formulary tier drug cost-share when clinical necessity has been established. DoD is required by 10 U.S.C. 1074g(a)(7) to establish procedures for allowing beneficiaries to receive agents that are not included on the uniform formulary but that are considered clinically necessary. When clinical justification is established, "the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary.''

A pharmaceutical professional association notes that 10 U.S.C. 1074g(a)(7) requires procedures for beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary under the same terms and conditions as an agent on the uniform formulary if those agents are considered clinically necessary for the beneficiary. Section 1074g(a)(7) says in pertinent part, "Such procedures shall include peer review procedures'' under which the determination of clinical necessity is made. The commenter presumes that the peer review provisions of § 199.15 will apply, and requests that these provisions be applied to the Military Treatment Facilities as well.

The rule has been modified to reflect that peer review provisions comparable to those of § 199.15 apply to clinical necessity determinations for prescriptions submitted to the TMOP or retail pharmacies. Although the time periods for peer review under § 199.15 applicable to the pharmacy benefits program have not been specifically modified in the rule, the retail pharmacy benefits program have not been specifically modified in the rule, the retail pharmacy Request for Proposals has a requirement that the goal is to complete 95% of the medical necessity reviews within two days, and 100% within 5 days. In initial determinations are subject to reconsideration, which are subject to appeal, with the contract directing shorter time periods than allowed under the Quality and Utilization Review Peer Review Organization (PRO) Program provisions of § 199.15. Information on clinical necessity may be provided by beneficiaries, providers, and pharmacies. The peer review provisions of § 199.15 do not apply to the Military Treatment Facilities, where there is no beneficiary entitlement to non-formulary drugs. The Military Treatment Facilities, however, will have procedures for evaluation of clinical necessity determinations.

A professional association commented that the rule does not explain patient appeal rights. The association recommended that the rule should explicitly incorporate the existing appeal process found at § 199.10 for all beneficiaries asserting they are entitled to a non-formulary agent at the formulary cost-share because of clinical necessity. An expeditious appeal process is required under 10 U.S.C. 1074g(a)(7). The rule has been modified to state that policies and procedures comparable to those for appealing decisions under § 199.15 and § 199.10 shall apply to requests that non-formulary agents be dispensed by retail pharmacies or TMOP at the formulary co-pay tier. Appealable issues include medical or clinical necessity denials, and denials based on factual coverage issues. Although the rule has not been specifically modified with respect to appeal timeframes, the retail pharmacy Request for Proposals has a requirement that 75% of requests for reconsideration shall be processed to completion within 10 working days after the date of receipt by the contractor, and 100% within 25 working days.

A medical association submitted a comment recommending prescribing decisions be made exclusively by a specialist provider who must be able to override any formulary restriction. Under the uniform formulary the medical necessity process allows medical providers to provide documentation to justify provision of a non-formulary pharmaceutical agent at the formulary cost-share. If clinical necessity is not established, the pharmaceutical agents within the TRICARE pharmacy benefit are still available to the beneficiary in both the TMOP and retail pharmacies, but at the non-formulary cost-share.

A manufacturer's association notes that the process in the rule for requesting a non-formulary prescription at the formulary cost-sharing amount requires the beneficiary or his or her provider to submit documentation supporting the claim of clinical necessity. The association appreciates that the rule does not delay dispensing the prescription pending a determination of clinical necessity, however expresses an opinion that Congress did not intend the beneficiary to incur a financial burden of paying the

non-formulary cost-share pending a decision on clinical necessity. The association recommends the rule be changed so that whenever a prescription for a non-formulary agent is accompanied by a request for a finding of clinical necessity, that the prescription be dispensed at the formulary cost-share. Instead of a beneficiary receiving a refund when clinical necessity has been established by the beneficiary, the government would have to attempt to collect the difference in cost-shares if either the beneficiary was unsuccessful in supporting his assertion of medical necessity, or the beneficiary submits no information in support at all. In establishing a process to implement the statutory policy, we have adopted a process that accomplishes the legislative intent with minimal transaction costs. The process suggested by this comment would have greater transaction costs, with a need for a separate billing, accounting, and collection system, not commensurate with any benefit associated with beneficiaries potentially parting temporarily with the $13 co-pay differential per prescription.

Q. Department of Defense Pharmacy and Therapeutics Committee

In the proposed rule we explained that the Department of Defense Pharmacy and Therapeutics Committee will develop the uniform formulary of pharmaceutical agents. The committee will review the formulary on a periodic basis, and make additional recommendations regarding the formulary as the committee determines necessary and appropriate to the Director, TRICARE Management Activity. Committee members will have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations.

The committee will identify therapeutic classes of pharmaceutical agents. The committee will consider the clinical and cost effectiveness of pharmaceutical agents relative to other agents in the class, following the guidelines contained in this regulation. Therapeutic drug class reviews will be conducted on a scheduled, periodic basis, as determined by the committee.

A professional association asked what procedures will be used by the Committee to obtain full information about the cost of pharmaceutical agents. The Committee will obtain information on existing process from the Federal Supply Schedule (FSS), temporary FSS price reductions, national pharmaceutical contracts, blanket purchase agreements, and incentive price agreements. The Committee will also obtain information on prices that pharmaceutical companies may offer in proposed blanket purchase agreements, proposed temporary FSS price reductions, and proposed incentive agreements.

A pharmacy association stated that the approach used to make formulary decisions is the antithesis of the approach used in the private sector and recommends DoD follow that approach. The association stated the private sector requires the value of a drug in terms of clinical and/or cost effectiveness must be established before it is added to the formulary, rather than having a presumption that a drug is a formulary drug. This approach is unavailable to DoD because under 10 U.S.C. 1074g(a)(2)(B), "the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent * * * unless the Pharmacy and Therapeutics Committee * * * finds that a pharmaceutical agent does not have a significant clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.''

A pharmacy association stated that the proposed rule does not assure confidentiality regarding proprietary data considered by the Pharmacy and Therapeutics Committee. Proprietary information submitted is protected under the Freedom of Information Act, specifically 5 U.S.C. 552(b)(4), which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

Comments were received from a pharmaceutical association and medical associations stating the proposed rule does not clearly define the types of professionals that will be on the DoD Pharmacy and Therapeutics Committee. Additional comments were received from a medical association, and a pharmaceutical manufacturer recommending specific types of physician membership on the Pharmacy and Therapeutics committee. In § 199.21(b)(2) we describe the composition of the committee. Committee members will have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. When such expertise is not available within the committee regarding the review of specific pharmaceuticals or therapeutic classes, the committee may request assistance from consultants with expertise in those areas. The rule is consistent with the statute regarding committee membership.

A comment was received by a medical association stating that Pharmacy and Therapeutics Committee decisions must be well documented and shared publicly with all concerned parties. The recommendations of the Pharmacy and Therapeutics Committee, the comments of the Beneficiary Advisory Panel, and the decisions of the Director, TRICARE Management Activity will be made public through the TRICARE Communications and Customer Service Directorate information systems previously described, excluding those materials proprietary in nature.

Several questions were received from professional associations and drug manufacturer's concerning the ethical and conflict of interest restrictions, including non-disclosure restrictions that will apply to members of the DoD Pharmacy and Therapeutics Committee, and whether the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, applies.

All members of the DoD Pharmacy and Therapeutics Committee are governed by the DoD Standards of Conduct regulations. The Standards of conduct cross-references are published in 32 CFR Part 40, hence, are not repeated in the rule. DoD employees are governed by the Office of Government Ethics (OGE) regulation, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, and the Department of Defense regulation, DoD 5500.7–R, that supplements the OGE regulation. With respect to the Federal Advisory Committee Act (FACA), its applicability is dependent upon whether any members are not federal employees. The National Defense Authorization Act for Fiscal Year 2004, (Pub. L. 108–136), section 725, transferred certain members of the Pharmacy and Therapeutics Committee to the Beneficiary Advisory Panel. The result is that there will be no members of the Pharmacy and Therapeutics Committee who are not federal employees, therefore the requirements of FACA do not apply to this committee.

A professional organization suggests that TRICARE consider having cost effectiveness recommendations made by a contracting officer, as opposed to the DoD Pharmacy and Therapeutics Committee. Recommendations concerning the cost effectiveness of pharmaceutical agents are required to be made by the Pharmacy and Therapeutics Committee under 10 U.S.C. 1074g(a)(2)(C) which states: "In considering the relative cost

effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.''

A drug manufacturer commented that DoD should require the Pharmacy and Therapeutics Committee to document the rationale (*e.g.*, the clinical evidence) behind a decision to include or not include a drug on the formulary. The Pharmacy and Therapeutics Committee will document its rationale and recommendations, which will be forwarded to the Beneficiary Advisory Panel. The Committee will apply the relevant criteria listed in the regulation for determining clinical effectiveness.

A drug manufacturer commented that the preamble to the proposed rule provided that the decisions of the Pharmacy and Therapeutics Committee will occur by majority vote, but the text of the rule is silent on this issue. The commenter also recommends that a "decision to exclude a drug from the uniform formulary'' include a requirement for two-thirds of the members concurring in the recommendation. The rule has been amended to include in the text of the rule that recommendations of the Committee will be by majority vote. DoD does not believe that two-thirds of the members need to concur in a recommendation that a particular pharmaceutical agent be a non-formulary agent. First, the Committee makes a recommendation, and not a final decision on the formulary classification of a pharmaceutical agent. Second, any decision by the Director, TRICARE Management Activity to classify an agent as non-formulary does not "exclude'' the agent from the list of allowable pharmaceutical agents. Non-formulary agents will continue to be available in retail pharmacies and the TMOP, only with a higher cost-share. The lower formulary cost-share will be applied if it is determined that it is clinically necessary for the beneficiary to have that particular agent, rather than a formulary agent.

The rule states that pharmaceutical agents that are used exclusively for medical conditions that are expressly excluded from the TRICARE benefit by statute or regulation will not be considered for inclusion on the uniform formulary. A pharmaceutical industry association expressed a belief that this is contrary to the requirements of 10 U.S.C. 1074g(a)(2)(D) that "no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee'' and 10 U.S.C. 1074g(b)(2) that the committee consider for inclusion "any drugs newly approved by the Food and Drug Administration.'' The quotation of this language from the statute must be read in the context of 10 U.S.C. 1074g(a)(1), which requires the establishment of "an effective, efficient, integrated pharmacy benefits program under this chapter'' (emphasis added). This "chapter'' is chapter 55 of title 10, which established some boundaries on the DoD health program. Under 10 U.S.C. 1079(a)(13), CHAMPUS/TRICARE does not cover "any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury or bodily malfunction.'' Additionally, certain therapies and treatments are expressly prohibited under chapter 55. For example, under 10 U.S.C. 1079(a)(10), therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided, and under 10 U.S.C. 1079(a)(11) treatment of obesity may not be provided if obesity is the sole or major condition treated. Only in these very limited types of circumstances will the Committee not consider for inclusion on the uniform formulary a new FDA approved drug. Except for these types of limited circumstances, which are required by other statutes under chapter 55 of title 10, United States Code, the Committee shall review at each quarterly meeting "drugs newly approved by the Food and Drug Administration.'' No pharmaceutical agent on the uniform formulary shall become a non-formulary agent unless recommended by the Committee, referred to the Beneficiary Advisory Panel for comment, and acted upon by the Director, TRICARE Management Activity.

A commercial group recommended that we make clear that excluded pharmaceutical agents shall not be available as non-formulary agents, nor will they be cost-shared under the TRICARE Pharmacy program. We concur with that recommendation and have modified the rule.

R. Uniform Formulary Beneficiary Advisory Panel

The proposed rule stated that a Uniform Formulary Beneficiary Advisory Panel will be established to review and comment on the development of the uniform formulary. The panel will meet after each Pharmacy and Therapeutics Committee quarterly meeting. The panel's comments will be submitted to the Director, TRICARE Management Activity. The Director will consider the comments before implementing the uniform formulary or any recommendations for change made by the Pharmacy and Therapeutics Committee.

Comments were received from a pharmaceutical association and pharmaceutical manufacturer recommending the Beneficiary Advisory Panel have a member on the DoD Pharmacy and Therapeutics Committee, and the Beneficiary Advisory Panel should meet before the Pharmacy and Therapeutics Committee meets to provide input to the Pharmacy and Therapeutics Committee. The Department non-concurs on both suggestions because they would be contrary to the statute. The rule as written is consistent with 10 U.S.C. 1074g(c) on both the authorized membership of the DoD Pharmacy and Therapeutics Committee and the role of the Beneficiary Advisory Panel. Under 10 U.S.C. 1074g(b)(1), Congress has defined the membership of the Pharmacy and Therapeutics Committee, and we are in compliance with that statute. The purpose of the Beneficiary Advisory Panel is to "review and comment on development of the uniform formulary'', while the role of the Pharmacy and Therapeutics committee is to actually develop the formulary.

A comment was received from a military association recommending a higher DoD authority than the Director, TRICARE Management Activity, should have the responsibility of reviewing the Beneficiary Advisory Panel concerns. Additionally, the association proposed that the rule should direct the Beneficiary Advisory Panel when submitting comments that are contrary to the recommendation of the Pharmacy and Therapeutics Committee, to submit the comments to the Assistant Secretary of Defense for Health Affairs, with a copy to the Under Secretary of Defense for Personnel and Readiness, and the Assistant Secretary of Defense for Health Affairs, or his designee, should be responsible for responding to the panel's comments in writing prior to the next meeting of the panel. The Department non-concurs with these suggestions. The responsibilities and functions of the Assistant Secretary of Defense for Health Affairs are described in DoD Directive 5136.1, and the responsibilities and functions of the Director, TRICARE Management Activity are described in DoD Directive 5136.12. Operational issues are the responsibility of the Director, TRICARE Management Activity. The Director, TRICARE Management Activity is responsible for serving as the program

manager for TRICARE health and medical resources, and supervising and administering TRICARE programs. A recent reorganization of the TRICARE Management Activity has the Assistant Secretary of Defense for Health Affairs also serving in the role of Director, TRICARE Management Activity. Feedback to the Beneficiary Advisory Panel will occur without the need for a regulatory specification in the rule.

A drug manufacturer association suggested that the rule require the Director, TRICARE Management Activity to respond to the comments and recommendations of the Beneficiary Advisory Panel in writing to enable the public to understand the reasoning and motivation that support his decisions.

This suggestion is neither required by the statute nor consistent with Department management. The TMA Director is accountable to senior DoD leadership, as well as to Congressional oversight and for compliance with all legal requirements. An advisory panel provides input to the decision process, but is not the accountable entity for the Department's decisions. Information on Department decisions and the rationale for them will be a matter of public record, without the need for regulatory specifications in the rule.

S. Mandatory Generic Substitution

As discussed in the proposed rule, mandatory substitution of generic drugs listed with an "A'' rating in the current Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) (or any successor) published by the Food and Drug Administration and generic equivalents of grandfather or Drug Efficacy Study Implementation (DESI) category drugs is required for brand name drugs.

Brand name drugs will be available at the non-formulary tier when dispensed in lieu of a generic equivalent if selection of the branded product is based solely on the personal preference of the provider or beneficiary. Section P, "Reduction of Co-Payment for Cases of Clinical Necessity'' of this preamble describes the process for obtaining non-formulary drugs at the formulary tier in situations of clinical necessity.

A medical association commented that mandatory substitution of one product for another should be prohibited. Mandatory generic substitution is a cost-effective method of providing FDA approved equivalent pharmaceutical products to DoD beneficiaries. In those rare situations when the brand name version of a generically available product is needed to meet the unique clinical needs of a patient, it will be available at the formulary tier with documented clinical necessity.

Comments were received from commercial groups validating and encouraging the Department's use of generic pharmaceuticals in place of more costly brand-names whenever possible.

A comment challenged the proposed rule provision that brand name drugs will be available at the non-formulary tier when dispensed in lieu of a generic equivalent if based solely on the personal preference of the provider or beneficiary. The rule has been changed to modify mandatory generic substitution such that the formulary tier co-payment applies only when clinical necessity is established. A brand name drug that has a generic equivalent is not covered by TRICARE if clinical necessity is not established.

A TRICARE managed care support contractor stated the following in regard to § 199.21(i)(2), now designated in the rule as 199.21(j)(2), on mandatory generic substitution: "Currently, if a pharmacy enters a DAW2 on a MAC-list drug, a 100% beneficiary cost-share will be passed to the pharmacy. By changing the DAW indicator to a DAW1, a $9 brand co-pay results on the same medication. Today, different DAWs result in different co-pays/cost-shares. Is it correct to assume that, with the new program, how the DAW field of the claim is populated (*i.e.,* DAW 0, 1, 2, or 4) will have no bearing on the resulting co-pay?'' A DAW–1 (Dispense as Written 1—Medically necessary as indicated by the physician on the prescription) designation by itself is not sufficient to obtain coverage of a brand name drug at the formulary co-payment. For the brand name drug to be covered by TRICARE, clinical necessity must also be independently validated by TRICARE. Prescriptions designated as DAW–2 (Dispense as Written per patient request) and other DAW prescriptions are not covered.

A medical association stated its opinion that psychotropic drugs cannot be substituted for each other. A foundation stated its opinion that the formulary must include all anti-epileptic drugs regardless of brand name or generic status. A voluntary organization for a specific disease has requested that all drugs for treatment of this disease be included in the uniform formulary and that these drugs be exempted from the mandatory substitution requirements in the rule. We are not aware of any clinical reason why psychotropic drugs or anti-epileptic drugs or drugs for other specific diseases should be treated differently than products in other therapeutic categories. Our three-tiered approach and the generic substitution rule apply to all products.

IV. Preemption of State Laws

The rule was modified to clarify the preemption of State laws as applicable to the TRICARE Pharmacy Benefits Program.

V. Fraud, Abuse, and Conflict of Interest

The rule was modified to clarify the fraud, abuse, and conflict of interest requirements under the TRICARE pharmacy benefits program.

VI. Regulatory Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The rule is not an economically significant regulatory action. Cost-shares for generic and formulary pharmaceutical agents were addressed in the implementation of the TRICARE Senior Pharmacy benefit in 2001. Approximately 1.5 million persons are potential beneficiaries of this program, and expected benefits per person are approximately $2,000 per year. The rule includes the addition of a third tier to the uniform formulary cost-share structure by adding non-formulary pharmaceutical agents, which will have an impact of less than $100 million. The rule, although not economically significant under Executive Order 12866, is significant under Executive Order 12866, and has been reviewed by the Office of Management and Budget.

The rule is not a major rule under the Congressional Review Act.

The rule does not require a regulatory flexibility analysis as it would have no significant economic impact on a substantial number of small entities.

The rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, Pharmacy Benefits.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.2(b) by adding in alphabetical order a definition of "*Pharmaceutical Agent*'' and adding a sentence at the end of the current definition of "*Prescription drugs and medicines*'' to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Pharmaceutical Agent. Drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

* * * * *

Prescription drugs and medicines * * * Prescription drugs and medicines may also be referred to as "pharmaceutical agents''.

* * * * *

■ 3. Revise § 199.21 to read as follows:

§ 199.21 Pharmacy benefits program

(a) General—(1) *Statutory authority.* Title 10, U.S. Code, Section 1074g requires that the Department of Defense establish an effective, efficient, integrated pharmacy benefits program for the Military Health System. This law is independent of a number of sections of Title 10 and other laws that affect the benefits, rules, and procedures of TRICARE, resulting in changes to the rules otherwise applicable to TRICARE Prime, Standard, and Extra.

(2) *Pharmacy benefits program.* The pharmacy benefits program, which includes the uniform formulary and its associated tiered co-payment structure, is applicable to all of the uniformed services. Its geographical applicability is all 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In addition, if authorized by the Assistant Secretary of Defense (Health Affairs), the TRICARE program may be implemented in areas outside the 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In such case, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to the pharmacy benefits program rules as may be appropriate to the areas involved.

(3) *Uniform formulary.* The pharmacy benefits program features a uniform formulary of pharmaceutical agents as defined in § 199.2.

(i) The uniform formulary will assure the availability of pharmaceutical agents in the complete range of therapeutic classes authorized as basic program benefits.

(ii) As required by 10 U.S.C. 1074g(a)(2) and implemented under the procedures established by paragraphs (e) and (f) of this seciton, pharmaceutical agents in each therapeutic class are selected for inclusion on the uniform formulary based upon the relative clinical effectiveness and cost effectiveness of the agents in such class. If a pharmaceutical agent in a therapeutic class is determined by the Department of Defense Pharmacy and Therapeutics Committee not to have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other pharmaceutical agents included on the uniform formulary, the Committee may recommend it be classified as a non-formulary agent. In addition, if the evaluation by the Pharmacy and Therapeutics Committee concludes that a pharmaceutical agent in a therapeutic class is not cost effective relative to other pharmaceutical agents in that therapeutic class, considering costs, safety, effectiveness, and clinical outcomes, the Committee may recommend it be classified as a non-formulary agent.

(iii) Pharmaceutical agents which are used exclusively in medical treatments or procedures that are expressly excluded from the TRICARE benefit by statute or regulation will not be considered for inculsion on the uniform formulary. Excluded pharmaceutical agents shall not be available as non-formulary agents, nor will they be cost-shared under the TRICARE pharmacy benefits program.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to § 199.2. The following definitions apply only to this section:

(1) *Clinically necessary.* Also referred to as clinical necessity. Sufficient evidence submitted by a beneficiary or provider on behalf of the beneficiary that establishes that one or more of the following conditions exist: The use of formulary pharmaceutical agents is contraindicated; the patient experiences significant adverse effects from formulary pharmaceutical agents in the therapeutic class, or is likely to experience significant adverse effects from formulary pharmaceutical agents in the therapeutic class; formulary pharmaceutical agents result in therapeutic failure, or the formulary pharmaceutical agent is likely to result in therapeutic failure; the patient previously responded to a non-formulary pharmaceutical agent and changing to a formulary pharmaceutical agent would incur an unacceptable clinical risk; or there is no alternative pharmaceutical agent on the formulary.

(2) *Therapeutic class.* A group of pharmaceutical agents that are similar in chemical structure, pharmacological effect, and/or clinical use.

(c) *Department of Defense Pharmacy and Therapeutics Committee*—(1) *Purpose.* The Department of Defense Pharmacy and Therapeutics Committee is established by 10 U.S.C. 1074g to assure that the selection of pharmaceutical agents for the uniform formulary is based on broadly representative professional expertise concerning relative clinical and cost effectiveness of pharmaceutical agents and accomplishes an effective, efficient, integrated pharmacy benefits program.

(2) *Composition.* As required by 10 U.S.C. 1074g(b), the committee includes representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members will have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations.

(3) *Executive Council.* The Pharmacy and Therapeutics Committee may have an Executive Council, composed of those voting and non-voting members of the Committee who are military or civilian employees of the Department of Defense. The function of the Executive Council is to review and analyze issues relating to the operation of the uniform formulary, including issues of an inherently governmental nature, procurement sensitive information, and matters affecting military readiness. The Executive Council presents information to the Pharmacy and Therapeutics Committee, but is not authorized to act for the Committee.

(d) *Uniform Formulary Beneficiary Advisory Panel.* As required by 10 U.S.C. 1074g(c), a Uniform Formulary Beneficiary Advisory Panel reviews and comments on the development of the uniform formulary. The Panel includes members that represent non-governmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the TRICARE mail-order pharmacy program, and TRICARE network providers. The panel will meet

after each Pharmacy and Therapeutics Committee quarterly meeting. The Panel's comments will be submitted to the Director, TRICARE Management Activity. The Director will consider the comments before implementing the uniform formulary or any recommendations for change made by the Pharmacy and Therapeutics Committee. The Panel will function in accordance with the Federated Advisory Committee Act (5 U.S.C. App. 2).

(e) *Determinations regarding relative clinical and cost effectiveness for the selection of pharmaceutical agents for the uniform formulary*—(1) *Clinical effectiveness.* (i) It is presumed that pharmaceutical agents in a therapeutic class are clinically effective and should be included on the uniform formulary unless the Pharmacy and Therapeutics Committee finds by a majority vote that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other pharmaceutical agents included on the uniform formulary in that therapeutic class. This determination is based on the collective professional judgment of the DoD Pharmacy and Therapeutics Committee and consideration of pertinent information from a variety of sources determined by the Committee to be relevant and reliable. The DoD Pharmacy and Therapeutics Committee has discretion based on its collective professional judgment in determining what sources should be reviewed or relied upon in evaluating the clinical effectiveness of a pharmaceutical agent in a therapeutic class.

(ii) Sources of information may include but are not limited to:

(A) Medical and pharmaceutical textbooks and reference books;

(B) Clinical literature;

(C) U.S. Food and Drug Administration determinations and information;

(D) Information from pharmaceutical companies;

(E) Clinical practice guidelines, and

(F) Expert opinion.

(iii) The DoD Pharmacy and Therapeutics Committee will evaluate the relative clinical effectiveness of pharmaceutical agents within a therapeutic class by considering information about their safety, effectiveness, and clinical outcome.

(iv) Information considered by the Committee may include but is not limited to:

(A) U.S. Food and Drug Administration approved and other studied indications;

(B) Pharmacology;

(C) Pharmacokinetics;

(D) Contraindications;

(E) Warnings/precautions;

(F) Incidence and severity of adverse effects;

(G) Drug to drug, drug to food, and drug to disease interactions;

(H) Availability, dosing, and method of administration;

(I) Epidemiology and relevant risk factors for diseases/conditions in which the pharmaceutical agents are used;

(J) Concomitant therapies;

(K) Results of safety and efficacy studies;

(L) Results of effectiveness/clinical outcomes studies, and

(M) Results of meta-analyses.

(2) Cost effectiveness. (i) In considering the relative cost effectiveness of pharmaceutical agents in a therapeutic class, the DoD Pharmacy and Therapeutics Committee shall evaluate the costs of the agents in relation to the safety, effectiveness, and clinical outcomes of the other agents in the class.

(ii) Information considered by the Committee concerning the relative cost effectiveness of pharmaceutical agents may include but is not limited to:

(A) Cost of the pharmaceutical agent to the Government;

(B) Impact on overall medical resource utilization and costs;

(C) Cost-efficacy studies;

(D) Cost-effectiveness studies;

(E) Cross-sectional or retrospective economic evaluations;

(F) Pharmacoeconomic models;

(G) Patent expiration dates;

(H) Clinical practice guideline recommendations, and

(I) Existence of existing or proposed blanket purchase agreements, incentive price agreements, or contracts.

(f) *Evaluation of pharmaceutical agents for determinations regarding inclusion on the uniform formulary.* The DoD Pharmacy and Therapeutics Committee will periodically evaluate or re-evaluate individual pharmaceutical agents and therapeutic classes of pharmaceutical agents for determinations regarding inclusion or continuation on the uniform formulary. Such evaluation or re-evaluation may be prompted by a variety of circumstances including, but not limited to:

(1) Approval of a new pharmaceutical agent by the U.S. Food and Drug Administration;

(2) Approval of a new indication for an existing pharmaceutical agent;

(3) Changes in the clinical use of existing pharmaceutical agents;

(4) New information concerning the safety, effectiveness or clinical outcomes of existing pharmaceutical agents;

(5) Price changes;

(6) Shifts in market share;

(7) Scheduled review of a therapeutic class; and

(8) Requests from Pharmacy and Therapeutics Committee members, military treatment facilities, or other Military Health System officials.

(g) *Administrative procedures for establishing and maintaining the uniform formulary*—(1) *Pharmacy and Therapeutics Committee determinations.* Determinations of the Pharmacy and Therapeutics Committee are by majority vote and recorded in minutes of Committee meetings. The minutes set forth the determinations of the committee regarding the pharmaceutical agents selected for inclusion in the uniform formulary and summarize the reasons for those determinations. For any pharmaceutical agent (including maintenance medications) for which a recommendation is made that the status of the agent be changed from the formulary tier to the non-formulary tier of the uniform formulary, or that the agent requires a pre-authorization, the Committee shall also make a recommendation as to effective date of such change that will not be longer than 180 days from the final decision date but may be less. The minutes will include a record of the number of members voting for and against the Committee's action.

(2) *Beneficiary Advisory Panel.* Comments and recommendations of the Beneficiary Advisory Panel are recorded in minutes of Panel meetings. The minutes set forth the comments and recommendations of the Panel and summarize the reasons for those comments and recommendations. The minutes will include a record of the number of members voting for or against the Panel's comments and recommendations.

(3) *Uniform formulary final decisions.* The Director of the TRICARE Management Activity makes the final DoD decisions regarding the uniform formulary. Those decisions are based on the Director's review of the final determinations of the Pharmacy and Therapeutics Committee and the comments and recommendations of the Beneficiary Advisory Panel. No pharmaceutical agent may be designated as non-formulary on the uniform formulary unless it is preceded by such recommendation by the Pharmacy and Therapeutics Committee. The decisions of the Director of the TRICARE Management Activity are in writing and establish the effective date(s) of the uniform formulary actions.

(h) *Obtaining pharmacy services under the pharmacy benefits program*—(1) *Points of service.* There are four outpatient pharmacy points of service:

(i) Military Treatment Facilities (MTFs);

(ii) Retail network pharmacies: Those are non-MTF pharmacies that are a part of the network established for TRICARE retail pharmacy services;

(iii) Retail non-network pharmacies: Those are non-MTF pharmacies that are not part of the network established for TRICARE retail pharmacy services, and

(iv) the TRICARE Mail Order Pharmacy (TMOP).

(2) *Availability of formulary pharmaceutical agents*—(i) *General.* Subject to paragraph (h)(2)(ii) of this section, formulary pharmaceutical agents are available under the Pharmacy Benefits Program from all of the points of service identified in paragraph (h)(1) of this section.

(ii) *Availability of formulary pharmaceutical agents at military treatment facilities.* Pharmaceutical agents included on the uniform formulary are available through MTFs, consistent with the scope of health care services offered in such facilities. The Basic Core Formulary (BCF) is a subset of the uniform formulary and is a mandatory component of all MTF pharmacy formularies. The BCF contains the minimum set of pharmaceutical agents that each MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Additions to individual MTF formularies are determined by local Pharmacy and Therapeutics Committees based on the scope of health care services provided at the respective MTFs. All pharmaceutical agents on the local MTF formulary must be available to all categories of beneficiaries.

(3) *Availability of non-formulary pharmaceutical agents*—(i) *General.* Non-formulary pharmaceutical agents are generally available under the pharmacy benefits program from the retail network pharmacies, retail non-network pharmacies, and the TRICARE Mail Order Pharmacy (TMOP) at the non-formulary cost-share.

(ii) *Availability of non-formulary pharmaceutical agents at military treatment facilities.* Although not a beneficiary entitlement, non-formulary pharmaceutical agents may be made available to eligible covered beneficiaries through the MTF pharmacies for prescriptions approved through the non-formulary special order process that validates the medical necessity for use of the non-formulary pharmaceutical agent.

(iii) *Availability of clinically appropriate non-formulary pharmaceutical agents to members of the Uniformed Services.* The pharmacy benefits program is required to assure the availability of clinically appropriate pharmaceutical agents to members of the uniformed services, including, where appropriate, agents not included on the uniform formulary. Clinically appropriate pharmaceutical agents will be made available to members of the Uniformed Services, including, where medical necessity has been validated, agents not included on the uniform formulary. MTFs shall establish procedures to evaluate the clinical necessity of prescriptions written for members of the uniformed services for pharmaceutical agents not included on the uniform formulary. If it is determined that the prescription is clinically necessary, the MTF will provide the pharmaceutical agent to the member.

(iv) *Availability of clinically appropriate pharmaceutical agents to other eligible beneficiaries at retail pharmacies or the TMOP.* Eligible beneficiaries will receive non-formulary pharmaceutical agents at the formulary cost-share when medical necessity has been established by the beneficiary and/or his/her provider. The peer review provisions of § 199.15 shall apply to the clinical necessity pre-authorization determinations. TRICARE may require that the time for review be expedited under the pharmacy benefits program.

(i) *Cost-sharing requirements under the pharmacy benefits program*—(1) *General.* Under 10 U.S.C. 1074g(a)(6), cost-sharing requirements are established in this section for the pharmacy benefits program independent of those established under other provisions of this Part. Cost-shares under this section partially defray government costs of administering the pharmacy benefits program when collected by the government for prescriptions dispensed through the retail network pharmacies or the TRICARE Mail Order Pharmacy. The higher cost-share paid for prescriptions dispensed by a non-network retail pharmacy is established to encourage the use of the most economical venue to the government. Cost-sharing requirements are based on the classification of a pharmaceutical agent as generic, formulary, or non-formulary, in conjunction with the point of service from which the agent is acquired.

(2) *Cost-sharing amounts.* Active duty members of the uniformed services do not pay cost-shares. For other categories of beneficiaries, cost-sharing amounts are as follows:

(i) For pharmaceutical agents obtained from a military treatment facility, there is no co-payment.

(ii) For pharmaceutical agents obtained from a retail network pharmacy there is a:

(A) $9.00 co-payment per prescription required for up to a 30-day supply of a formularly pharmaceutical agent.

(B) $3.00 co-payment per prescription for up to a 30-day supply of a generic pharmaceutical agent.

(C) $22.00 co-payment per prescription for up to a 30-day supply of a non-formulary pharmaceutical agent.

(iii) For formulary and generic pharmaceutical agents obtained from a retail non-network pharmacy there is a 20 percent or $9.00 co-payment (whichever is greater) per prescription for up to a 30-day supply of the pharmaceutical agent.

(iv) For non-formulary pharmaceutical agents obtained at a retail non-network pharmacy there is a 20 percent or $22.00 co-payment (whichever is greater) per prescription for up to a 30-day supply of the pharmaceutical agent.

(v) For pharmaceutical agents obtained under the TMOP program there is a:

(A) $9.00 co-payment per prescription for up to a 90-day supply of a formulary pharmaceutical agent.

(B) $3.00 co-payment for up to a 90-day supply of a generic pharmaceutical agent.

(C) $22.00 co-payment for up to a 90-day supply of a non-formulary pharmaceutical agent.

(vi) For TRICARE Prime beneficiaries who obtain prescriptions from retail non-network pharmacies, the enrollment year deductible for outpatient claims is $300 per individual; $600 per family; and a point of service cost-share of 50 percent thereafter applies in lieu of the 20 percent co-payment.

(vii) Except as provided in paragraph (h)(2)(viii) of this section, for pharmaceutical agents acquired by TRICARE Standard beneficiaries from retail non-network pharmacies, beneficiaries are subject to the $150.00 per individual or $300.00 maximum per family annual fiscal year deductible.

(viii) Under TRICARE Standard, dependents of members of the uniformed services whose pay grade is E–4 or below are subject to the $50.00 per indiviudal or $100.00 maximum per family annual fiscal year deductible.

(ix) The TRICARE catastrophic cap limits apply to pharmacy benefits program cost-sharing.

(x) The per prescription co-payments established in this paragraph (i)(2) of this section may be adjusted periodically based on experience with the uniform formulary, changes in economic circumstances, and other appropriate factors. Any such adjustment may be made upon the recommendation of the Pharmacy and Therapeutics Committee and approved by the Assistant Secretary of Defense (Health Affairs). Any such adjusted amount will maintain compliance with the requirements of 10 U.S.C. 1074g(a)(6).

(3) *Special cost-sharing rule when there is a clinical necessity for use of a non-formulary pharmaceutical agent.* (i) When there is a clinical necessity for the use of a non-formulary pharmaceutical agent that is not otherwise excluded as a covered benefit, the pharmaceutical agent will be provided at the same co-payment as a formulary pharmaceutical agent can be obtained.

(ii) A clinical necessity for use of a non-formulary pharmaceutical agent is established when the beneficiary or their provider submits sufficient information to show that one or more of the following conditions exist:

(A) The use of formualry pharmaceutical agents is contraindicated;

(B) The patient experiences significant adverse effects from formulary pharmaceutical agents, or the provider shows that the patient is likely to experience significant adverse effects from formulary pharmaceutical agents;

(C) Formulary pharmaceutical agents result in therapeutic failure, or the provider shows that the formulary pharmaceutical agent is likely to result in therapeutic failure;

(D) The patient previously responded to a non-formulary pharmaceutical agent and changing to a formulary pharmaceutical agent would incur unacceptable clinical risk; or

(E) There is no alternative pharmaceutical agent on the formulary.

(iii) Information to establish clinical necessity for use of a non-formulary pharmaceutical agent should be provided to TRICARE for prescriptions submitted to a retail network pharmacy.

(iv) Information to establish clinical necessity for use of a non-formulary pharmaceutical agent should be provided as part of the claims processes for non-formulary pharmaceutical agents obtained through non-network points of service, claims as a result of other health insurance, or any other situations requiring the submission of a manual claim.

(v) Information to establish clinical necessity for use of a non-formulary pharmaceutical agent may be provided with the prescription submitted to the TMOP contractor.

(vi) Information to establish clinical necessity for use of a non-formulary pharmaceutical agent may also be provided at a later date, but no later than sixty days from the dispensing date, as an appeal to reduce the non-formulary co-payment to the same co-payment as a formulary drug.

(vii) The process of establishing clinical necessity will not unnecessarily delay the dispensing of a prescription. In situations where clinical necessity cannot be determined in a timely manner, the non-formulary pharmaceutical agent will be dispensed at the non-formulary co-payment and a refund provided to the beneficiary should clinical necessity be established.

(viii) Peer review and appeal and hearing procedures. All levels of peer review, appeals, and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to TRICARE Management Activity for a formal review. Procedures comparable to those established under §§ 199.15 and 199.10 of this part shall apply. If it is determined that the prescription is clinically necessary, the pharmaceutical agent will be provided to the beneficiary at the formulary cost-share. TRICARE may require that the time periods for peer review or for appeal and hearing be expedited under the pharmacy benefits program. For purposes of meeting the amount in dispute requirement of § 199.10(a)(7), the relevant amount is the difference between the cost shares of a formulary versus non-formulary drug. The amount for each of multiple prescriptions involving the same drug to treat the same medical condition and filled within a 12-month period may be combined to meet the required amount in dispute.

(j) *Use of generic drugs under the pharmacy benefits program.* (1) The designation of a drug as a generic, for the purpose of applying cost-shares at the generic rate, will be determined through the use of standard pharmaceutical references as part of commercial best business practices. Pharmaceutical agents will be designated as generics when listed with an "A'' rating in the current Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) published by the Food and Drug Administration, or any successor to such reference. Generics are multisource products that must contain the same active ingredients, are of the same dosage form, route of administration and are identical in strength or concentration.

(2) The pharmacy benefits program generally requires mandatory substitution of generic drugs listed with an "A'' rating in the current Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) published by the FDA and generic equivalents of grandfather or Drug Efficacy Study Implementation (DESI) category drugs for brand name drugs. In cases in which there is a clinical justification for a brand name drug in lieu of a generic equivalent, under the standards and procedures of paragraph (h)(3) of this section, the generic substitution policy is waived.

(3) When a blanket purchase agreement, incentive price agreement, Government contract, or other circumstances results in a brand pharmaceutical agent being the most cost effective agent for purchase by the Government, the Pharmacy and Therapeutics Committee may also designate that the drug be cost-shared at the generic rate.

(k) *Preauthorization of certain pharmaceutical agents.* (1) Selected pharmaceutical agents may be subject to prior authorization or utilization review requirements to assure medical necessity, clinical appropriateness and/or cost effectiveness.

(2) The Pharmacy and Therapeutics Committee will assess the need to prior authorize a given agent by considering the relative clinical and cost effectiveness of pharmaceutical agents within a therapeutic class. Pharmaceutical agents that require prior authorization will be identified by a majority vote of the Pharmacy and Therapeutics Committee. The Pharmacy and Therapeutics Committee will establish the prior authorization criteria for the pharamaceutical agent.

(3) Prescriptions for pharmaceutical agents for which prior authorization criteria are not met will not be cost-shared under the TRICARE pharmacy benefits program.

(4) The Director, TRICARE Management Activity, may issue policies, procedures, instructions, guidelines, standards or criteria to implement this paragraph (k).

(l) *TRICARE Senior Pharmacy Program.* Section 711 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654A–175) established the TRICARE Senior Pharmacy Program for Medicare eligible beneficiaries effective April 1, 2001.

These beneficiaries are required to meet the eligibility criteria as prescribed in § 199.3 of this part. The benefit under the TRICARE Senior Pharmacy Program applies to prescription drugs and medicines provided on or after April 1, 2001.

(m) *Effect of other health insurance.* The double coverage rules of § 199.8 of this part are applicable to services provided under the pharmacy benefits program. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor. Beneficiaries who elect to use this pharmacy benefits shall provide DoD with other health insurance information.

(n) *Procedures.* The Director, TRICARE Management Activity shall establish procedures for the effective operation of the pharmacy benefits program. Such procedures may include restrictions of the quantity of pharmaceuticals to be included under the benefit, encouragement of the use of generic drugs, implementation of quality assurance and utilization management activities, and other appropriate matters.

(o) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States.

(2) Based on the determination set forth in paragraph (o)(1) of this section, any State or local law relating to health insurance, prepaid health plans, or other health care delivery or financing methods is preempted and does not apply in connection with TRICARE pharmacy contracts. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE pharmacy contracts. However, the Department of Defense may by contract establish legal obligations on the part of TRICARE contractors to conform with requirements similar or identical to requirements of State or local laws or regulations.

(3) The preemption of State and local laws set forth in paragraph (o)(1) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of the statutes identified in paragraph (o)(1) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD pharmacy services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD pharmacy services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(p) *General fraud, abuse, and conflict of interest requirements under TRICARE pharmacy benefits program.* All fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program, as set forth in this part 199 (see applicable provisions of § 199.9 of this part) are applicable to the TRICARE pharmacy benefits program. Some methods and procedures for implementing and enforcing these requirements may differ from the methods and procedures followed under the basic CHAMPUS program.

Dated: March 25, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7129 Filed 3–31–04; 8:45 am]

BILLING CODE 5001–06–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[Directive No. 1: Appendix A]

Publication of Revised Bylaws of the Interagency Security Classification Appeals Panel

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The Information Security Oversight Office, National Archives and Records Administration, is publishing a revision of the bylaws of the Interagency Security Classification Appeals Panel (ISCAP). The bylaws are revised in accordance with section 5.3(c) of Executive Order 12958, as amended, "Classified National Security Information.'' Under the terms of E.O. 12958, as amended, the Director of ISOO serves as Executive Secretary to the ISCAP.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Executive Secretary, Interagency Security Classification Appeals Panel, 202–219–5250.

SUPPLEMENTARY INFORMATION: The Interagency Security Classification Appeals Panel (ISCAP) performs several critical functions in implementing several provisions of E.O. 12958, "Classified National Security Information,'' as amended. These include: (a) Deciding appeals brought by authorized persons who have filed classification challenges under section 1.8 of the amended Order; (b) approving, denying, or amending agency exemptions from automatic declassification, as provided in section 3.3(d) of the amended Order; and (c) deciding on appeals by parties whose requests for declassification of information under section 3.5 of the amended Order have been denied.

These bylaws describe the procedures to be followed by individuals or organizations who wish to bring matters before the ISCAP, and the procedures that the ISCAP will follow to resolve these matters. The ISCAP first published its bylaws on March 15, 1996 (61 FR 10854).

The ISCAP has revised its bylaws to reflect the March 25, 2003, amendment of E.O. 12958. While intelligence sources and methods information remain subject to the jurisdiction of the ISCAP, section 5.3(f) of the amended Order recognizes the special authority and responsibility of the Director of Central Intelligence to protect such information. Of particular note, the revised ISCAP bylaws include a new article (*see* No. IX) which addresses section 5.3(f) of the amended Order.

The appendix was inadvertently removed when we revised part 2001 (*see* 68 FR 55168, September 22, 2003) and we are publishing an updated Appendix A.

These bylaws are being issued in final without prior notice of proposed rulemaking because they are not subject to the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq*, The ISCAP

is not an "agency'' subject to the APA. Rather, it was created "for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States.'' E.O. 12958, as amended, sec. 5.2(e). In *Franklin* v. *Massachusetts,* 505 U.S. 788, 800–01 (1992), the Supreme Court held that the President is not an agency under the APA, and therefore not subject to APA requirements or judicial review.

List of Subjects in 32 CFR Part 2001

Classified information, Reporting and recordkeeping requirements.

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

■ Title 32 of the Code of Federal Regulations, chapter XX, is amended as follows:

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

■ 1. The authority citation of part 2001 is revised to read as follows:

Authority: Section 5.1 (a) and (b), and section 5.3, E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333 as amended by E.O. 13292, 68 FR 15315, March 28, 2003.

■ 2. Part 2001 is amended by adding Appendix A to read as follows:

Appendix A to Part 2001—Interagency Security Classification Appeals Panel Bylaws

Article I. Purpose

The purpose of the Interagency Security Classification Appeals Panel (ISCAP) and these bylaws is to fulfill the functions assigned to the ISCAP by Executive Order 12958, "Classified National Security Information,'' as amended.

Article II. Authority

Executive Order 12958, "Classified National Security Information,'' as amended (hereafter the "Order''), and its implementing directives.

Article III. Membership

A. Primary Membership. Appointments under section 5.3(a) of the Order establish the primary membership of the ISCAP.

B. Alternate Membership.

1. Primary members are expected to participate fully in the activities of the ISCAP. The Executive Secretary shall request that each entity represented on the ISCAP also designate in writing addressed to the Chair an alternate or alternates to represent it on all occasions when the primary member is unable to participate. Such written designation must be made by the agency or office head represented on the ISCAP, or by their deputy or senior agency official for the Order. When serving for a primary member, an alternate member shall assume all the rights and responsibilities of that primary member, including voting.

2. When a vacancy in the primary membership occurs, the designated alternate shall represent the agency or office until the agency or office head fills the vacancy. The Chair, working through the Executive Secretary, shall take all appropriate measures to encourage the agency or office head to fill a vacancy in the primary membership as quickly as possible.

C. Liaison. The Executive Secretary shall request that each entity represented on the ISCAP also designate to the Chair in writing an individual or individuals (hereinafter referred to as "liaisons'') to serve as a liaison to the Executive Secretary in support of the primary member and alternate(s). Such written designation must be made by the agency or office head represented on the ISCAP, or by their deputy or senior agency official for the Order. These designated individuals shall meet at the call of the Executive Secretary.

D. Chair. As provided in section 5.3(a) of the Order, the President shall select the Chair from among the primary members.

E. Vice Chair. The members may elect from among the primary members a Vice Chair who shall:

1. Chair meetings that the Chair is unable to attend; and

2. Serve as Acting Chair during a vacancy in the Chair of the ISCAP.

Article IV. Meetings

A. Purpose. The primary purpose of ISCAP meetings is to discuss and bring formal resolution to matters before the ISCAP.

B. Frequency. As provided in section 5.3(a) of the Order, the ISCAP shall meet at the call of the Chair, who shall schedule meetings as may be necessary for the ISCAP to fulfill its functions in a timely manner. The Chair shall also convene the ISCAP when requested by a majority of its primary members.

C. Quorum. Meetings of the ISCAP may be held only when a quorum is present. For this purpose, a quorum requires the presence of at least five primary or alternate members.

D. Attendance. As determined by the Chair, attendance at meetings of the ISCAP shall be limited to those persons necessary for the ISCAP to fulfill its functions in a complete and timely manner. The members may arrange briefings by substantive experts from individual departments or agencies, after consultation with the Chair.

E. Agenda. The Chair shall establish the agenda for all meetings. Potential items for the agenda may be submitted to the Chair by any member or the Executive Secretary. Acting through the Executive Secretary, the Chair will distribute the agenda and supporting materials to the members as soon as possible before a scheduled meeting.

F. Minutes. The Executive Secretary shall be responsible for the preparation of each meeting's minutes, and the distribution of draft minutes to each member. The minutes will include a record of the members present at the meeting and the result of each vote. At the subsequent meeting of the ISCAP, the Chair will read or reference the draft minutes of the previous meeting. At that time the minutes will be corrected, as necessary, and approved by the membership and certified by the Chair. The approved minutes will be maintained among the records of the ISCAP.

Article V. Voting

A. Motions. When a decision or recommendation of the ISCAP is required to resolve a matter before it, the Chair shall request or accept a motion for a vote. Any member, including the Chair, may make a motion for a vote. No second shall be required to bring any motion to a vote. A quorum must be present when a vote is taken.

B. Eligibility. Only the members, including the Chair, may vote on a motion before the ISCAP, with each agency or office represented having one vote.

C. Voting Procedures. Votes shall ordinarily be taken and tabulated by a show of hands.

D. Passing a Motion. In response to a motion, members may vote affirmatively, negatively, or abstain from voting. Except as otherwise provided in these bylaws, a motion passes when it receives a majority of affirmative votes of the members voting. However, in no instance will the ISCAP reverse an agency's decision without the affirmative vote of at least a majority of the members present.

E. Votes in a Non-meeting Context. The Chair may call for a vote of the membership outside the context of a formal ISCAP meeting. An alternate member may also participate in such a vote if the primary member cannot. The Executive Secretary shall record and retain such votes in a documentary form and immediately report the results to the Chair and other primary and alternate members.

Article VI. First Function: Appeals of Agency Decisions Regarding Classification Challenges

In accordance with section 5.3(b) of the Order, the ISCAP shall decide on appeals by authorized persons who have filed classification challenges under section 1.8 of the Order.

A. Jurisdiction. The ISCAP will consider appeals from classification challenges that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously challenged the classification action at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish procedures for classification challenges, by filing a written challenge directly with the agency head or designated senior agency official, as defined in section 6.1(ii) of the Order;

3. The appellant has (a) Received a final agency decision denying his or her challenge; or (b) Not received (i) an initial written response to the classification challenge from the agency within 120 days of its filing, or (ii) a written response to an internal agency appeal within 90 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal

courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 500, Washington, DC 20408. The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the classification challenge from the affected agency. No classified information should be included within the initial appeal document. The Executive Secretary will arrange for the transmittal of classified information from the agency after receiving the appeal. If it is impossible for the appellant to file an appeal without including classified information, prior arrangements must be made by contacting the Information Security Oversight Office.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair, the designated senior agency official, and the primary member, alternate, or liaison of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

G. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

H. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

I. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling classification challenges.

J. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP.

Article VII. Second Function: Review of Agency Exemptions From Automatic Declassification

In accordance with section 5.3(b) of the Order, the ISCAP shall approve, deny or amend agency exemptions from automatic declassification as provided in section 3.3(d) of the Order.

A. Agency Notification of Exemptions. The agency head or designated senior agency official shall notify the Executive Secretary of agency exemptions in accordance with the requirements of the Order and its implementing directives. Agencies shall provide any additional information or justification that the Executive Secretary believes is necessary or helpful in order for the ISCAP to review and decide on the exemption. The agency head may seek relief from the ISCAP from any request for information by the Executive Secretary to which the agency objects.

B. Preparation. The Executive Secretary shall notify the Chair of the agency submission. At the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an exemption file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the exemptions. The exemption file will eventually include all records pertaining to the ISCAP's consideration of the agency's exemptions.

C. Resolution. The ISCAP may vote to approve an agency exemption, to deny an agency exemption, to amend an agency exemption, or to remand the matter to the agency for further consideration. A decision to deny or amend an agency exemption requires the affirmative vote of a majority of the members present.

D. Notification. The Executive Secretary shall promptly notify in writing the agency head and designated senior agency official of the ISCAP's decision.

E. Agency Appeals. Within 60 days of receipt of an ISCAP decision that denies or amends an agency exemption, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

F. Protection of Classified Information. Any classified information contained in the exemption file shall be handled and protected in accordance with the Order and its implementing directives. Information that the agency maintains is exempt from declassification shall remain classified unless and until a final decision is made to declassify it.

G. Maintenance of File. The Executive Secretary shall maintain the exemption file among the records of the ISCAP.

Article VIII. Third Function: Appeals of Agency Decisions Denying Declassification Under Mandatory Review Provisions of the Order

In accordance with section 5.3(b) of the Order, the ISCAP shall decide on appeals by parties whose requests for declassification under section 3.5 of the Order have been denied.

A. Jurisdiction. The ISCAP will consider appeals from denials of mandatory review for declassification requests that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously filed a request for mandatory declassification review at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish procedures for mandatory review, by filing a written request directly with the agency head or designated senior agency official;

3. The appellant has (a) Received a final agency decision denying his or her request; or (b) Not received (i) an initial decision on the request for mandatory declassification review from the agency within one year of its filing, or (ii) a final decision on an internal agency appeal within 180 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 500, Washington, DC 20408. The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the request for mandatory declassification review from the affected agency.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the primary member, alternate, or liaison of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Narrowing Appeals. To expedite the resolution of appeals and minimize backlogs, the Executive Secretary is authorized to consult with appellants with the objective of narrowing or prioritizing the information subject to the appeal.

G. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

H. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

I. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

J. Protection of Classified Information. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information that is subject to an appeal from an agency decision denying declassification under the mandatory review provisions of the Order shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling mandatory review for declassification requests and appeals.

K. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP. All information declassified as a result of ISCAP action shall be available for inclusion within the databases delineated in section 3.7 of the Order.

Article IX. Information Owned or Controlled by the Director of Central Intelligence (DCI)

Notwithstanding any conclusion reached by the ISCAP that information owned or controlled by the DCI should be declassified, if the DCI disagrees because he or she has made a determination as set forth in section 5.3(f) of the Order, and he or she so notifies the Panel, the information shall remain classified. The Panel expects notification to normally be made in writing within 60 days of receipt of the Panel's written notification of such a conclusion. In the event that the DCI requires additional time to provide notification to the Panel, the DCI, his or her deputy, or the DCI's primary or alternate Panel member, shall notify the Panel, in writing, of the need for additional time, not to exceed an additional 30 days. Following receipt of the DCI's determination, the Panel, by majority vote, or an agency head represented on the Panel, may petition the President, through the Assistant to the President for National Security Affairs, to reverse the DCI's determination. Such petitions must be made within 60 days of receipt of the DCI's determination. If the Panel has not been notified of the DCI's determination within 60 days (or if additional time is requested as outlined above, within 90 days) of the date that the DCI has been notified of the Panel's conclusion, the information shall be declassified, pending resolution of any appeals filed pursuant to section I of Article VIII of these bylaws.

Article X. AddItional Functions

In its consideration of the matters before it, the ISCAP shall perform such additional advisory functions as are consistent with and supportive of the successful implementation of the Order.

Article XI. Support Staff

As provided in section 5.3(a) of the Order, the Director of the Information Security Oversight Office will serve as Executive Secretary to the ISCAP, and the staff of the Information Security Oversight Office will provide program and administrative support for the ISCAP. The Executive Secretary will supervise the staff in this function pursuant to the direction of the Chair and ISCAP. On an as needed basis, the ISCAP may seek detailees from its member agencies to augment the staff of the Information Security Oversight Office in support of the ISCAP.

Article XII. Records

A. Integrity of ISCAP Records. The Executive Secretary shall maintain separately documentary materials, regardless of their physical form or characteristics, that are produced by or presented to the ISCAP or its staff in the performance of the ISCAP's functions, consistent with applicable federal law.

B. Referrals. Any Freedom of Information Act request or other access request for a document that originated within an agency other than the ISCAP shall be referred to that agency for processing.

Article XIII. Annual Reports to the President

The ISCAP has been established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States (section 5.3(e) of the Order). As provided in section 5.3(a) of the Order, pertinent information and data about the activities of the ISCAP shall be included in the Reports to the President issued by the Information Security Oversight Office. The Chair, in coordination with the other members of the ISCAP and the Executive Secretary, shall determine what information and data to include in each Report.

Article XIV. Approval, Amendment, and Publication of Bylaws

The approval and amendment of these bylaws shall require the affirmative vote of at least four of the ISCAP's members. In accordance with the Order, the Executive Secretary shall submit the approved bylaws and their amendments for publication in the **Federal Register**.

Dated: March 26, 2004.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. 04–7317 Filed 3–31–04; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–007]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is temporarily changing the requirements for the operation of the draw of the Henderson Avenue bascule span bridge across the Bayou Portage, mile 2.0 at Pass Christian, Harrison County, Mississippi. This temporary rule will establish the same two-hour notice requirement for an opening of the draw for the new bridge that were in effect for the old bridge prior to its removal. The new Henderson Avenue bascule span bridge has greater navigational clearances than the bridge it replaced and more vessels are expected to be able to transit the bridge without requiring an opening. The temporary rule will provide interim operating requirements for the Henderson Avenue bascule span bridge while the Coast Guard conducts a rulemaking to implement permanent regulations for the operation of the bridge. Comments must be received by June 1, 2004.

DATES: This rule is effective from 6 a.m. on April 10, 2004 through 6 p.m. on October 10, 2004.

ADDRESSES: You may mail comments and related material to Commander (obc), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material on the temporary operating requirements. If you do so, please include your name and address, identify the docket number for this temporary rulemaking [CGD08–04–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. This temporary rule establishes the same operating requirements for the new Henderson Avenue bascule span bridge that were in effect for the old bridge that was removed. The new bridge has greater navigational clearances than the bridge it replaced and more vessels are expected to be able to transit the bridge without requiring an opening.

While the temporary rule is in effect, mariners and other interested parties may provide comments and information relative to the effectiveness of the temporary drawbridge operation change. The Coast Guard may change this temporary rule based on comments received.

Background and Purpose

The old low-level bascule span bridge has been demolished and removed and the new, mid-level bascule span bridge is being constructed on the exact same alignment. It will be opened to traffic and placed in service on April 10, 2004. The old bridge provided a vertical clearance of 11 feet above mean high water in the closed-to-navigation position and a horizontal clearance of 70 feet between fenders. The replacement mid-level bascule span bridge provides a vertical clearance of 29.5 feet above mean high water in the closed-to-navigation position with a horizontal clearance of 75.5 feet between fenders. A special operating regulation was in place for the old bridge, which stated that the draw of the bridge would open on signal if at least two hours notice was given. When the old bridge was removed, the special operating regulation was removed. When the new bridge is completed and placed in service, it would normally be required to open on signal as required by 33 CFR 117.5.

Since the new bridge is constructed on the exact same alignment and it provides a significantly greater vertical clearance in the closed-to-navigation position than the old bridge, the Harrison County Board of Supervisors predicts that even fewer navigation openings will be requested than were required for the old bridge and has requested that a two-hour notice for an opening to navigation be established for the new bridge. This temporary rule will allow the bridge to operate on the same schedule as the old bridge six months, from April 10, 2004, through October 10, 2004. During this period, data will be collected, including the number of vessels which pass through the bridge each day, not requiring an opening and those that do require an opening. The Coast Guard will review the data including logs of drawbridge openings and evaluate public comment to help determine if a permanent special drawbridge operating regulation is appropriate.

Concurrent with publishing this temporary rule, the Coast Guard is also publishing a notice of proposed rulemaking elsewhere in today's **Federal Register**, [CDD08–04–010], proposing to make this temporary requirement a permanent change to the bridge operation.

Navigation at the site of the bridge consists primarily of recreational pleasure craft, including sailing vessels, and tugs with barges in tow which service one concrete facility upstream of the bridge. Alternate routes are not available to marine traffic.

The temporary rule provides that from 6 a.m. on April 10, 2004 through 6 p.m. on October 10, 2004 the draw of the Henderson Avenue bascule span bridge across Bayou Portage, mile 2.0 at Pass Christian, MS will open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Regulatory Evaluation

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

A special operating regulation existed for the old bridge, which also required a two-hour notice for an opening of the draw. During the many years that the old bridge operated under that regulation, the Coast Guard did not received any complaints regarding the drawbridge operating schedule. The new replacement bridge provides significantly greater navigational clearances than the old bridge, and the number of openings are predicted to correlate with the increased clearances. Commercial navigation is expected to be able to move more freely through the new structure. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These entities include the operators of vessels, which service a concrete facility, the only business located on Bayou Portage upstream of the bridge. This rule will have no impact on any small entities because the temporary regulation applies to a bridge with greater navigational clearances than the bridge it replaced which had the same regulation before it was removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. on April 10, 2004, through 6 p.m. on October 10, 2004, § 117.T684 is added to read as follows:

§ 117.T684 Bayou Portage.

The draw of the Henderson Avenue Bridge, mile 2.0, at Pass Christian, shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: March 8, 2004.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–7272 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–008]

RIN 1625–AA09

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel, New York. This temporary final rule will allow the bridge to operate only one lift span for openings, on the even hour, 8 a.m. to 4 p.m., daily, from May 1, 2004 through December 1, 2004. This action is necessary to complete structural repairs at the bridge.

DATES: This temporary final rule is effective from May 1, 2004 through December 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–04–008) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM; and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

This rule extends the single leaf bridge operation, which has been in effect since September 3, 2002, to facilitate structural repairs at the bridge. We published a notice of proposed rulemaking on May 30, 2002 (67 FR 37744). We received no comments in response to the notice of proposed rulemaking. The single leaf bridge operation is necessary to complete vital necessary repairs at the bridge.

The Coast Guard believes making this rule effective on May 1, 2004, is reasonable because this is the continuation of the bridge repair work and operating schedule that has been successfully in effect to assure the continued safe operation of the bridge.

Historically, there are few requests to open this bridge and the bridge will be available to provide single span openings during the effective period of this temporary rule.

Background and Purpose

The Long Beach Bridge has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water. The existing regulations are listed at 33 CFR 117.799(g).

The bridge owner, Nassau County Department of Public Works, asked the Coast Guard in May 2002, to temporarily change the drawbridge operation regulations to facilitate necessary structural repairs at the bridge.

On May 30, 2002, we published a notice of proposed rulemaking (67 FR 37744) in response to the above request. We received no comments in response to the notice of proposed rulemaking.

On September 5, 2002, we published a temporary final rule in the **Federal Register** (67 FR 56754) effective from September 5, 2002 through June 30, 2003, to allow the implementation of the structural repairs at the bridge. We were notified in May 2003, that the scheduled repairs would not be completed by June 30, 2003.

In response to the above request we published a second temporary final rule on July 22, 2003, in the **Federal Register** (68 FR 43306), to extend the effective period from July 1, 2003 through April 30, 2004.

Both temporary final rules allowed the bridge to open only a single lift span for bridge openings on the even hours 8 a.m. to 4 p.m., daily.

The Coast Guard was notified on January 15, 2004, that due to unforeseen structural deterioration and various unforeseen issues, the repairs at the bridge will not be completed by the scheduled completion date of April 30, 2004.

The single leaf bridge operation bridge repairs, scheduled to be completed by April 30, 2004, must now be extended to continue until December 1, 2004, in order to complete the structural repairs at the bridge.

The Coast Guard believes this request is reasonable because this bridge seldom opens for vessel traffic and the mariners that normally require openings can transit with a single leaf bridge opening.

Regulatory Evaluation

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

This conclusion is based on the fact that the bridge seldom opens for vessel traffic and the mariners that do require the bridge to open can transit using a single leaf opening.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge seldom opens for vessel traffic and the mariners that do require the bridge to open can transit using a single leaf opening.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security delegation no. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From May 1, 2004 through December 1, 2004, § 117.799 is amended by suspending paragraph (g) and adding a new paragraph (k) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(k) The Long Beach Bridge, mile 4.7, across Reynolds Channel, shall open on signal; except that, only one lift span need be opened for vessel traffic, on the even hour, 8 a.m. to 4 p.m., daily.

Dated: March 17, 2004.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–7336 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Required Number of Pieces Increased for 5-Digit and 5-Digit Scheme Packages of Low-Weight Standard Mail Flats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the implementing *Domestic Mail Manual* (DMM) standards to raise the required minimum number of pieces from 10 to 15 at which 5-digit and, for certain automation-compatible mail, optional 5-digit scheme presort destination packages are prepared in a Standard Mail job consisting of flat-size pieces each weighing no more than 5 ounces (0.3125 pound) and measuring no more than ¾ inch thick.

This final rule will increase processing efficiencies, reduce the overall production of packages (bundles) of certain Standard Mail flat-size pieces, and decrease overall Postal Service piece and bundle handling costs based on extensive Postal Service modeled estimates.

DATES: *Effective date:* April 1, 2004. Mailings presented for verification and acceptance after 12:01 a.m. on Sunday, August 1, 2004, must comply with this rule.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, Product Redesign, at (703) 292–3747; or Neil Berger, Mailing Standards, at (703) 292–3645.

SUPPLEMENTARY INFORMATION: Under current mailing standards, mailers have the option to prepare 5-digit and 5-digit scheme presort destination packages (collectively referred to in this final rule as 5-digit packages) of Standard Mail flat-size pieces not more than ¾ inch thick, regardless of the piece weight, whenever there are as few as 10 pieces to the same 5-digit ZIP Code or to the same 5-digit scheme destination in *Domestic Mail Manual* (DMM) L007. Under these same standards, mailers must prepare such packages when there are 17 or more pieces to these destinations. If a mailer selects an optional minimum 5-digit package size from 10 to 16 pieces, that same package size must be used consistently throughout the mailing job for all 5-digit packages.

The current mailing standards allowing the variable package minimums were implemented on September 5, 2002, and gave mailers the option to select a number from 10 to 17 as the minimum number of pieces at which 5-digit packages are prepared in a Standard Mail job of flat-size pieces no more than ¾ inch thick, without regard to the weight of the individual pieces. Prior to that date, mailers were required to prepare 5-digit packages whenever there were 10 or more pieces to the same 5-digit ZIP Code destination. Effective January 9, 2003, mailing standards were further amended to permit the preparation of optional 5-digit scheme packages under DMM L007 using the same flexible minimum of 10 to 17 pieces. Under current mailing standards, mailers may still prepare 5-digit packages with as few as 10 pieces.

The Postal Service had adopted the current optional 5-digit package minimum (optional with 10 to 16 pieces, required with 17 pieces) based in large part on an examination of the productivities and piece processing efficiencies of the automated flat sorting machine (AFSM) 100, which can handle flat-size pieces up to ¾ inch thick. Furthermore, as a result of the combined ⅗ rate, a change to the 5-digit package minimum would have little impact on postage.

Initial analysis of piece, package, and container handling costs indicated that the appropriate minimum for 5-digit packages of Standard Mail flat-size pieces is, on average, above 10 pieces, and that the minimum could be further increased for flats likely to be processed on the AFSM 100. AFSM 100-compatible flats are limited to pieces measuring no more than 12 inches high, 15 inches long, and ¾ inch thick. (Only flat-size pieces claimed and prepared at automation rates and meeting the

standards for the upgraded flat sorting machine (UFSM) 1000 may measure up to 1¼ inches thick. All other flat-size pieces may not measure more than ¾ inch thick.)

Increasing the minimum for 5-digit packages of such pieces could help reduce overall Postal Service processing costs, with the additional AFSM 100 piece handlings for pieces moving from 5-digit to 3-digit packages more than offset by reduced package handling costs. Package handling costs include processing the packages, either on a small parcel and bundle sorter (SPBS) or manually, and opening the packages in preparation for piece processing.

With the changes announced in this final rule, mailers will not be permitted to prepare 5-digit packages until there are 15 or more pieces to a 5-digit ZIP Code or optional 5-digit scheme destination for Standard Mail mailings of flat-size pieces that each weigh no more than 5 ounces and measure no more than ¾ inch thick. For mailings that contain any pieces that weigh more than 5 ounces, and for UFSM 1000 automation rate flats measuring more than ¾ inch thick, regardless of weight, mailers will be required to prepare 5-digit packages whenever there are 10 or more pieces to a destination. For ease of administration, mailers will use the 10-piece package minimum for mailings of nonidentical-weight pieces if any pieces in the mailing weigh more than 5 ounces.

Comments

Background

On December 11, 2003, the Postal Service published a proposed rule in the **Federal Register** (68 FR 69066–69069) that contained changes to mailing standards in the *Domestic Mail Manual* (DMM) to raise the required minimum number of pieces from 10 to 15 at which 5-digit presort destination packages are prepared in a Standard Mail job consisting of flat-size pieces each weighing no more than 5 ounces (0.3125 pound) and measuring no more than ¾ inch thick. The Postal Service received comments on the proposed rule from four different parties, all involved in some aspect of mail or in the actual preparation of mail: an individual mailer, a third-party printer and mail house, a mailers' association, and a software developer. The Postal Service appreciates these comments and responds to them below.

Implement as an Option

Three of the four commenters urged that this change be implemented as an option rather than a requirement. One commenter believed that most mailers have not had adequate time to analyze how this change would affect their mailing operations, costs, and service. One of the commenters was particularly concerned about the possible erosion of delivery service for mail migrating from 5-digit packages to 3-digit packages.

One of the commenters believed that this change contradicts the Postal Service goal in the Transformation Plan of striving for flexibility and rule simplification as a means to attract more mailers and increase mail volumes and revenues. This same commenter noted that increasing the 5-digit package minimum to 15 pieces appeared less flexible than the current requirement that permits a package minimum to range from 10 to 17 pieces.

One commenter stated that this change should be implemented as an option and not a requirement until its impact on Postal Service costs can be determined.

Two commenters stated that the change would complicate rather than simplify Standard Mail preparation because of the weight threshold, and one questioned whether presort software developers and mail preparers would understand the change and be able to handle mailings of nonidentical-weight pieces with piece weights varying above and below 5 ounces.

The Postal Service has carefully reviewed these comments and would like to respond specifically to the concerns expressed about the impact on Postal Service costs, the potential erosion of service, and rule complexity in the following sections.

(1) Impact on Postal Service Costs

On September 5, 2002, the Postal Service introduced the 17-piece minimum option as announced in the **Federal Register** on August 20, 2002 (67 FR 53880–53882). The original modeling conducted by the Postal Service for piece, package, and container handling costs indicated that the appropriate minimum number of pieces for 5-digit packages of flat-size Standard Mail pieces was above 10 and that it could be increased up to 17 pieces for flats likely to be processed on the automated flat sorting machine (AFSM) 100. That original modeling also indicated that changing the minimum package size for 5-digit packages would decrease the Postal Service combined package and piece handling costs and, at the same time, should reduce overall production costs for mailers.

Additional Postal Service modeling conducted since the 10-to 17-piece package minimum was implemented, as well as analysis of mailer-provided data for a variety of actual Standard Mail mailings prepared using the current optional 17-piece 5-digit package minimum, both support the Postal Service conclusion that the refined specifications in this final rule will reduce overall Postal Service piece and package handling costs. The data collected from these mailings identified reductions in total 5-digit and 3-digit packages that averaged 29 percent for mailings of pieces weighing no more than 5 ounces. These same mailings also showed an inverse relationship between piece weights exceeding 5 ounces and the cost benefits; that is, as the piece weights increased beyond 5 ounces, the benefits decreased.

An informal survey of the mailing industry revealed that a relatively small number of mailers are taking advantage of the option to set their 5-digit package minimum higher than 10 pieces (up to 17 pieces) and there is no expectation that making the 15-piece minimum optional would result in greater use by the mailing industry. With such limited participation by the mailing industry, the Postal Service and mailers are unable to realize the potential cost saving opportunities associated with fewer package handlings, particularly for mailings of low-weight pieces. Thus a requirement is the best way to achieve the cost savings.

(2) Potential Erosion of Service

The Postal Service believes that this migration of pieces from 5-digit to 3-digit packages will produce no noticeable delays in delivery of those pieces. In fact, mailers now using the current package option (for example, 5-digit packages not prepared with fewer than 17 pieces) have reported no erosion of service for flat-size mailpieces that have moved from 5-digit to 3-digit packages. The Postal Service would like to point out that its internal operations have greatly improved the efficiency with which mailpieces in 3-digit packages are processed and distributed in today's automated environment.

The benefits of this change result, in large measure, from productivities and piece processing efficiencies of the AFSM 100, which can process pieces up to ¾ inch thick. Pieces greater than ¾ inch are generally processed on the UFSM 1000 at significantly lower productivities than if processed on the AFSM 100. This recognition of how mail is processed may help to explain why mailers using the current 17-piece option have not reported a negative impact in service.

(3) Rule Complexity

The Postal Service and the mailing industry have explored the issue of different possible minimums for the Standard Mail 5-digit package level since 2002 and have jointly determined that software would be able to support such a change. Although not required for this rule change, use of software certified under the Postal Service Presort Accuracy Validation and Evaluation (PAVE) program would help to ensure proper mail preparation. Ongoing discussions and exchanges between the mailing industry and the Postal Service indicated that using a set minimum rather than a "floating'' or variable minimum, along with a set weight maximum of 5 ounces and a set thickness maximum of ¾ inch would not add undue complexity to mail preparation.

The Postal Service also wishes to point out that software used for many other mail preparation standards, such as the advanced preparation options for flat-size mail, requires more sophisticated programming, even though the end user is scarcely aware of the complicated code behind the actual software application.

For those mailers who prepare mailings of nonidentical-weight pieces through selective binding or comailing operations, the Postal Service believes that implementing the rule to have mailers use the 10-piece 5-digit package minimum whenever the mailing will contain any pieces over 5 ounces should avoid sortation errors during list processing and mail preparation.

Although the current optional 10-piece to 17-piece minimum does provide mailers with more flexibility than the new minimums in this final rule, the fact is that most mailers have not changed their mail preparation and continue to use the 10-piece minimum for all mailings while other mailers use the 17-piece minimum for all Standard Mail mailings, including mailings of pieces well over 5 ounces. As a result, the Postal Service and Standard Mail mailers are not achieving current cost savings opportunities that are available with a minor change to the rules.

Wait for Cost-Based Rates

Two of the commenters stated that this change should be presented as an option rather than a requirement until cost-based rates have been implemented, when prices rather than rules can control Postal Service costs.

One commenter noted that even though the new package minimum of 15 pieces has no rate implication for Standard Mail pieces because both 5-digit and 3-digit sortation levels for flat-size mail are charged the same 3/5 rate, that it could certainly have rate implications if a similar minimum package size of 15 pieces were applied to other classes of mail. That commenter did not believe that changes to the rules for minimum package size were appropriate at this time and that the Postal Service should wait until it implements cost-based pricing, when pieces and packages will cover their equitable share of Postal Service costs.

The issue of cost-based rates is outside the scope of this final rule. However, the Postal Service wishes to assure the mailing industry that it is continuing to pursue its cost-based rates product redesign initiative, developed with the mailing industry. The Postal Service believes that the change in this final rule will allow the mailing industry and the Postal Service to take advantage of opportunities to improve flats processing efficiencies and restrain costs under the current rate structure.

It must be noted that approximately 40 percent of Postal Service mail processing costs for Standard Mail flats are associated with package and container handlings. Implementation of this change for Standard Mail flats will help to reduce these costs. As the Postal Service continues to seek ways to align rates and preparation requirements with customer needs and capabilities in the future, it also seeks ways to provide mail preparation standards that reduce combined Postal Service and mailer costs that do not require changes to the current rate structure, that can be implemented in the near future, and that are consistent with the future Postal Service operations environment. The Postal Service has no intention of extending this rule change to other classes of mail independent of an omnibus rate case or mail classification case that may include mail preparation and rate changes.

Postpone Implementation Date

Two commenters stated that the implementation date of April 4, 2004, as published in the proposed rule, would not provide sufficient time to prepare for this mail preparation change. One commenter recommended that the Postal Service provide adequate training for Postal Service employees on any modifications to the use of the Mail Evaluation Readability Lookup Instrument (MERLIN) and any related MERLIN software updates so that mail acceptance will not be delayed if this change is implemented.

The software developer, in particular, presented several concerns about the implementation date. The developer explained that the proposed implementation date of April 4, 2004, would not provide sufficient time to write and test required software changes, have the software tested and certified by the Postal Service under its PAVE program, and distribute the software to its customer base.

In view of the extremely practical concerns cited by the mailers and the software developer, as well as the need to give adequate notice about this change to the mailing industry and Postal Service personnel, the Postal Service will postpone the effective date of this change to August 1, 2004. The Postal Service believes that this additional time ensures that software developers, Standard Mail mailers, and Postal Service employees will have sufficient time to prepare for this change.

Although mailers using the new 15-piece 5-digit package minimum are not required to use PAVE-certified software (except for palletized mailings prepared under the package reallocation option in DMM M045, or mailings prepared under DMM M920, M930, or M940), PAVE tests will be available for presort software vendors to test this new minimum.

The required date to begin using the 15-piece 5-digit package minimum is August 1, 2004. At that time, mailings presented for verification and acceptance that consist of any flat-size pieces weighing more than 5 ounces or any automation rate pieces measuring more than ¾ inch thick, regardless of weight, will no longer be permitted to use a 5-digit package minimum greater than 10 pieces. Also on that date, mailings presented for verification and acceptance that consist of flat-size pieces weighing no more than 5 ounces (and measuring no more than ¾ inch thick) will not be permitted to use a 5-digit package minimum other than 15 pieces.

Before the August 1 implementation date, preferably as soon as practical, the Postal Service recommends that mailers begin using a minimum of 15 pieces for 5-digit and optional 5-digit scheme package preparation permitted as an option under current mailing standards for mailings of pieces that weigh no more than 5 ounces. This would be especially critical for mailings scheduled for production before August 1 but with a verification and acceptance date after August 1. The Postal Service also recommends that mailers limit the number of packages they produce and take necessary steps to ensure package integrity by setting their maximum package size as close to the maximums permitted in DMM M020, particularly

for packages prepared on pallets (*e.g.*, 20 pounds).

As part of this final rule, DMM E620.2.0 Presorted Rates, is reorganized in its entirety. Other than 5-digit package minimum, no other minimums in DMM E620 have been changed.

For the reasons presented in the proposed rule and those noted above in this final rule, the Postal Service adopts the following changes in the *Domestic Mail Manual* (DMM), which is incorporated by reference in the *Code of Federal Regulations* (CFR). See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

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

■ 2. Revise the following sections of the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E620 Presorted Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in a Regular Standard Mail or Nonprofit Standard Mail Presorted rate mailing must:

* * * * *

[Revise 1.1b to read as follows:]

b. Except as provided in 1.2, be part of a single mailing of at least 200 addressed pieces or 50 pounds of pieces qualifying for Presorted Standard Mail. Basic rate and 3/5 rate pieces prepared as part of the same mailing are subject to a single minimum volume standard. Regular and Nonprofit mailings must meet separate minimum volumes.

* * * * *

2.0 RATES

[Revise 2.0 by reorganizing text to read as follows:]

2.1 Application

Presorted rates for Regular and Nonprofit Standard Mail apply to letters, flats, and machinable and irregular parcels that meet the eligibility standards in E610 and the preparation standards in M045, M610, M800, or, for flat-size mail only, M900.

2.2 Basic Rate

The basic rate applies to pieces that do not meet the standards for 3/5 rates described in 2.3.

2.3 3/5 Rates

The 3/5 rate applies to qualifying pieces if they are presented:

a. For letter-size pieces (see C050.2.0), in quantities of 150 or more pieces for a single 3-digit ZIP Code prefix area, prepared in 5-digit or 3-digit trays.

b. For flat-size pieces (see C050.3.0):

(1) In a 5-digit scheme (under M950) or 5-digit package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; placed in a 5-digit scheme (under M920), 5-digit, or 3-digit sack containing at least 125 pieces or 15 pounds of pieces.

(2) In a 5-digit package of 10 or more pieces, or 15 or more pieces, as applicable, that is part of a group of packages sorted to a merged 5-digit or merged 5-digit scheme (under M920) sack that contains either at least one qualifying carrier route package of 10 or more pieces, or contains at least 125 pieces or 15 pounds of pieces prepared in 5-digit packages (both automation and Presorted rate 5-digit packages count toward the 125-piece or 15-pound sack minimum).

(3) In a 5-digit scheme (under M950) or 5-digit package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; palletized under M045, M920, M930, or M940.

c. For machinable parcels (see C050.4.0):

(1) In a 5-digit scheme (L606), 5-digit, ASF, or BMC sack containing at least 10 pounds of parcels. (The 3/5 rates are available only when all possible 5-digit scheme and 5-digit sacks are prepared.)

(2) On a 5-digit scheme (L606), 5-digit, ASF, or BMC pallet. (The 3/5 rates are available only when all possible 5-digit scheme and 5-digit pallets are prepared.)

d. For irregular parcels (see C050.5.0), in a 5-digit scheme (L606), 5-digit, or 3-digit sack containing at least 125 parcels or 15 pounds of parcels. (The 3/5 rates are available only when all possible 5-digit scheme and 5-digit sacks are prepared.)

e. For commingled machinable and irregular parcels, in a 5-digit scheme (L606) or 5-digit sack containing at least 10 pounds of parcels.

* * * * *

E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

* * * * *

1.5 Rate Application—Flats

Automation rates apply to each piece that is sorted under M045, M820, or M900 into the corresponding qualifying groups:

[Revise 1.5a to read as follows:]

a. Pieces in 5-digit or 5-digit scheme packages of 10 or more pieces, or 15 or more pieces, as applicable, or in 3-digit packages of 10 or more pieces qualify for the 3/5 automation rate.

* * * * *

M Mail Preparation and Sortation

* * * * *

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail

* * * * *

4.0 PREPARATION—FLAT-SIZE PIECES

* * * * *

4.2 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 4.2a to read as follows:]

a. 5-digit (required):

(1) For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; red Label 5 or optional endorsement line (OEL).

(2) For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; red Label 5 or OEL.

* * * * *

M800 All Automation Mail

* * * * *

M820 Flat-Size Mail

* * * * *

5.0 STANDARD MAIL

5.1 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 5.1a and 5.1b to read as follows:]

a. 5-digit scheme (optional):

(1) For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; optional endorsement line (OEL) required.

(2) For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less and measuring ¾ inch thick or less: 15-piece minimum; red Label 5 or OEL.

(2) For mailings containing any pieces weighing more than 5 ounces (0.3125 pound) or measuring more than ¾ inch thick: 10-piece minimum; red Label 5 or OEL.

* * * * *

M900 Advanced Preparation Options for Flats

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces

* * * * *

3.0 STANDARD MAIL

* * * * *

3.2 Package Preparation

Package size, preparation sequence, and labeling:

[Revise 3.2a and 3.2b to read as follows:]

a. 5-digit scheme (optional):

(1) For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; optional endorsement line (OEL) required.

(2) For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less and measuring ¾ inch thick or less: 15-piece minimum; red Label 5 or OEL.

(2) For mailings containing any pieces weighing more than 5 ounces (0.3125 pound) or measuring more than ¾ inch thick: 10-piece minimum; red Label 5 or OEL.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–7123 Filed 3–31–04; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 24

[WT Docket No. 01–108; FCC 04–22]

Public Mobile Services and Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission affirms the decision to establish a five-year sunset period for the removal of the Commission's requirement that cellular carriers provide analog service. The Commission also affirms the decision to remove the rule section governing electronic serial numbers (ESNs) in cellular telephones, but clarifies that the fraudulent and unauthorized use of ESNs remains contrary to federal law and Commission policy. Further, the Commission reconsiders and adopts a proposal to permit, in certain circumstances, cellular carriers to extend into neighboring unserved areas without prior Commission approval. The Commission also declines a request to further modify its rules regarding emissions limitations.

DATES: Effective June 1, 2004, except for a provision in the preamble this document permitting cellular carriers to extend into unserved areas of less than fifty square miles on a secondary basis, that is not effective until approved by the Office of Management and Budget (OMB) because it modifies information collection requirements. The agency will publish a document in the **Federal Register** announcing the effective date of the modified information collection.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order on Reconsideration,* FCC 04–22, adopted February 4, 2004, and released February 12, 2004. The full text of the Order on Reconsideration is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of Report and Order

I. Background

1. As part of its Year 2000 Biennial Review of regulations, the Commission issued a Report and Order, 67 FR 77175, December 17, 2002, in which it amended part 22 of its rules by modifying or eliminating various regulations relating to the Cellular Radiotelephone Service that became outdated due to technological change, increased competition in the Commercial Mobile Radio Services (CMRS), or supervening rules. Pursuant to section 11 of the Communications Act of 1934, as amended (Act), *see* 47 U.S.C. 161, the Commission re-examined its cellular rules in order to determine whether any of the rules are no longer necessary in the public interest as a result of the technological advances and growth in competition that have occurred in mobile telephony since the rules were first promulgated. As a result of this review, the Commission made several changes to its cellular rules, including: Modifying its rules to eliminate, after a five-year transition period, the requirement that carriers provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications; removing the manufacturing requirements found in § 22.919 governing electronic serial numbers in cellular telephones, and; modifying language in §§ 22.917 and 24.238 regarding out-of-band emission limits. The Commission also addressed a number of other part 22 issues raised by commenters, such as various proposals seeking to overhaul its cellular unserved area licensing framework.

2. In response to the *Report and Order,* petitions for reconsideration were filed by AT&T Wireless Services (AWS), the Cellular Telephone and Internet Association (CTIA), and Dobson Communications Corporation (Dobson). Further, Lucent Technologies (Lucent) submitted comments in response to a Public Notice seeking comment regarding the 2002 Biennial Regulatory Review proceeding which were incorporated into this proceeding.

II. Discussion

A. The Commission Did Not Err in Establishing a Five-Year Sunset Period for the Analog Requirement

3. *Background.* Since the establishment of the Cellular Radiotelephone Service in the early 1980s, all cellular carriers have been required to provide service in accordance with the compatibility standard for analog systems, known as

AMPS. The Commission mandated AMPS compatibility in order to accomplish two goals: (i) To enable subscribers of one cellular system to be able to use their existing terminal equipment (*i.e.* mobile handset) in a cellular market in a different part of the country (roaming); and (ii) to facilitate competition by eliminating the need for cellular consumers to acquire different handset equipment in order to switch between the two competing carriers within the consumers' home market (thereby ensuring reasonable consumer costs). Pursuant to § 22.901, a carrier was required to provide service to any subscriber within the carrier's cellular geographic service area (CGSA), including both the carrier's subscribers and roaming customers that are using technically compatible equipment.

4. In the *Report and Order,* the Commission concluded that, in light of the present competitive state of mobile telephony, the nationwide coverage achieved by cellular carriers, and the market demand for nationwide, ubiquitous coverage by carriers, the analog requirement has substantially achieved its purpose of ensuring that the public has access to low-cost, compatible equipment and to nationwide roaming. The Commission found that the objectives of the analog requirement can now largely be accomplished by market forces without the need for regulation, and therefore determined that the analog requirement should be removed. The Commission, however, found that eliminating the analog requirement immediately without a reasonable transition period would be extremely disruptive to certain consumers, particularly those with hearing disabilities as well as emergency-only consumers, who currently continue to rely on the availability of analog service and lack digital alternatives. Recognizing that telecommunications technology has become an essential part of everyday life, and that those without ready access are at a disadvantage with respect to both daily routine or emergency services, the Commission determined that it is in the public interest to establish a transition period during which time the wireless industry could develop solutions for hearing aid-compatibility issues and phones used by emergency-only callers can cycle from analog to digital.

5. AWS asserts that the Commission has not adequately met its burden to demonstrate that the analog rule remains "necessary in the public interest'' for five additional years, either for the original purposes of the rule or in order to ensure that certain consumers have access to wireless telephony. AWS argues that section 11 of the Act mandates that once the Commission has made the determination that a rule is no longer necessary as a result of meaningful economic competition, the Commission must repeal the rule. AWS maintains that it was improper for the Commission to use concerns regarding access by persons with hearing disabilities and emergency-only consumers in deciding whether to retain the rule because the Commission may only consider the original purposes for which the rule was adopted.

6. *Discussion.* In the *Report and Order,* the Commission concluded that the decision to defer the removal of the analog requirement in order to avoid causing significant hardship to certain consumers fully comports with its obligations under section 11 of the Act. The Commission continues to conclude that the effects of an immediate elimination of the analog requirement would have an inordinate impact with respect to current analog consumers, particularly persons with hearing disabilities and emergency-only users. The Commission affirms the conclusion that the five-year transition period is appropriate to ensure that persons with hearing disabilities and emergency-only consumers continue to have access to wireless devices, and it believes that the transition period is essential in ensuring a smooth migration from analog to digital technology.

1. The Commission's Decision To Implement a Five-Year Sunset of the Analog Requirement Is Consistent With the Original Purposes of the Rule

7. AWS argues that the analog requirement must be eliminated because it no longer serves its original purpose, and that under the Commission's own interpretation of section 11, the Commission may only consider the purposes for which the rule was adopted in deciding whether to retain a regulation. It is argued that, because the Commission found that the analog requirement has achieved its purpose of ensuring that the public has access to low-cost, compatible equipment and to nationwide roaming, the rule is no longer necessary and must be removed.

8. As noted, the Commission found that the original goals of ensuring reasonable consumer costs and seamless, nationwide service (*i.e.,* roaming) have been substantially achieved for most consumers. The Commission emphasized, however, that despite the multiple wireless technologies and services that are currently available, there are certain individuals, specifically emergency-only users and persons with hearing disabilities, who may not have readily available and accessible economic or technological alternatives to analog service. The Commission found that such consumers do not currently have adequate digital alternatives and would be unduly affected by the immediate elimination of the analog requirement. In so doing, the Commission recognized the reality that there is currently little or no meaningful economic competition to such consumers. The analog requirement is still necessary, at least in the near term, to ensure that emergency-only consumers and persons with hearing disabilities continue to have access to wireless telephony, and, accordingly, the decision to implement a sunset period is consistent with the original purposes of the rule.

2. The Commission Is Not Limited to the Original Purpose of a Rule in Determining Whether It Remains Necessary

9. Although the Commission's basis for establishing a five-year transition period is consistent with the original purposes of the analog requirement, the Commission notes that it would nonetheless be permissible to retain the analog requirement for other reasons if it concludes that it is in the public interest to do so. AWS is correct that the *Report and Order* stated that, in reviewing a regulation, the Commission must evaluate whether the concerns that led to the rule or the rule's original purpose may be achieved without the rule or with a modified rule. The Commission, however, did not conclude that it may only look to the original purposes of the rule to determine whether it remains necessary in the public interest. Instead, the *Report and Order* itself noted that the Commission is not limited to the original purposes of the analog requirement in determining whether the requirement remained necessary. The U.S. District Court of Appeals for the DC Circuit has found that nothing in the language of section 202(h) of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, indicates that the Commission is limited to the purposes for which the rule was adopted when determining whether or not it remains necessary. Similarly, there is no language in section 11 which suggests that the Commission is limited to the original purpose behind a rule in determining whether or not it should be retained. Indeed, it is unreasonable to interpret section 11 as requiring that a rule must be repealed if it has accomplished its original goals but yet remains necessary

with respect to another purpose. There is nothing in the text of section 11 or its legislative history that suggests that this is the appropriate standard for a biennial review.

3. Sections 255 and 332 of the Act Do Not Preclude the Commission From Finding That the Analog Requirement Remains Necessary

10. Section 255 of the Communications Act provides that manufacturers and telecommunications services providers must ensure that telecommunications equipment and telecommunications services are accessible to persons with disabilities. *See* 47 U.S.C. 255(c). Specifically, section 255(c) of the Act requires that "[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.'' Further, section 332 requires that the Commission ensure that providers of CMRS services are subjected to technical and operational rules comparable to those that apply to providers of substantially similar common carrier services. *See* 47 U.S.C. 332. The general goal behind section 332 is to ensure that economic forces rather than disparate regulatory constraints shape the development of the CMRS marketplace.

11. The *Report and Order* specifically discussed whether section 255 or other regulatory provisions, such as the Hearing Aid Compatibility Act of 1988 (HAC Act), which requires the Commission to establish regulations that ensure hearing-aid compatibility,[1] are sufficient to ensure accessibility to persons with hearing disabilities. The Commission found that, given the scarcity of digital devices that may be used with hearing aids, persons with hearing disabilities could be left without access to mobile telephony services in the event that the analog requirement is removed immediately, even with the existence of measures such as section 255 of the Act. The Commission specifically noted that it was establishing a transition period even though, pursuant to section 255, carriers are otherwise obligated to ensure that telecommunications service is accessible to persons with disabilities. The Commission found that, the independent requirements of section 255 notwithstanding, it was appropriate to also establish a five-year transition period in order to address the particular current problem of hearing aid-compatibility with digital handsets, and ensure access to mobile telephony service for persons with hearing disabilities.

12. Given the possible consequences to persons with hearing disabilities and emergency-only callers of the immediate removal of the analog requirement, the Commission sought to ensure that wireless services remain accessible to such consumers regardless of the mandates of section 255, *i.e.,* the Commission's action to defer the sunset of the analog requirement was sepraate distinct from the requirements of section 255. In the *Report and Order,* the Commission expressly stated that, notwithstanding a carrier's obligation under section 255, a transition period was being establish to safeguard access to mobile telephony. The purpose in implementing the transition was to ensure that persons with hearing disabilities have continuous access to wireless telecommunications services independent of actions taken by carriers to fulfill their statutory obligations. Because it is feasible that a carrier will not be in compliance with section 255, it is appropriate to establish a transition period to ensure uninterrupted access.

13. The Commission also rejects arguments that the Commission cannot require cellular carriers to bear the burden of maintaining a specific technology at its competitive disadvantage while similar CMRS providers are not subject to the same requirement. However, the Commission has previously determined that while regulatory parity is a significant policy that can yield important pro-competitive and pro-consumer benefits, parity for its own sake is not required by any provision of the Communications Act. Instead, section 332 empowers the Commission to make a distinction between different CMRS at any time if it becomes necessary to do so. Because the Commission has concluded that it is in the public interest to ensure that persons with hearing disabilities and emergency-only callers have access to mobile telephony, cellular carriers, as a consequence, must continue to provide analog service, as cellular is the only service in which every carriers has analog facilities.

4. The Decision To Establish a Five-Year Transition Period for the Removal of the Analog Requirement Was Not an Abuse of Discretion

14. AWS argues that the decision to select five years as the transition period was arbitrary given the Commission's own findings regarding the robust nature of the wireless industry and the significant competitive harms and costs associated with maintaining an analog network, as well as its failure to explain why the five-year transition is necessary in the public interest. AWS argues that at the very least the Commission must reduce the transition period to no longer than 30 months.

15. The Commission rejects AWS's argument that the Commission did not adequately demonstrate that the five-year transition period is in the public interest, and it disagrees with arguments that a five-year transition period is an inordinately long length of time. As AWS notes, the *Report and Order* stated that in light of the present state of competition in the wireless industry, the analog requirement has substantially achieved its purpose of facilitating competition and ensuring nationwide roaming. Throughout the *Report and Order*, however, the Commission was very clear in stating that, although there is a variety of wireless technologies and services available to most consumers, consumers such as persons with hearing disabilities or emergency-only users may not have readily available and accessible economic or technological alternatives to analog service. While market mechanisms will, for the most part, ensure access to digital services for most consumers, the same economic incentives do not exist that would ensure that emergency-only consumers and persons with hearing disabilities have adequate access to digital wireless service because they account for only a small percentage of mobile telephony subscribers. Because emergency-only callers and persons with hearing disabilities must currently continue to rely on analog technology for access to wireless service, the Commission found that the record in the proceeding supported a transition away from, rather than immediate elimination of, the analog rule.

16. In setting out a transition period, it was necessary for the Commission to establish a time frame that reflected its policy goals with respect to the analog requirement; that is, the transition period should be long enough to ensure that certain categories of individuals continue to have access to wireless telecommunications until digital solutions are readily available and

[1] The HAC Act requires almost all new telephones to "provides internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility,'' but provided an exemption for certain categories of phones including those used with CMRS and private mobile radio services (or PMRS). The Commission recently issued a *Report and Order* which modified the exemption to require that digital wireless phones be capable of being used effectively with hearing aids.

accessible to them, yet be limited in duration in recognition that the analog rule is no longer necessary to ensure competition and nationwide service for most consumers. Although a number of commenters argued that the analog requirement should be maintained indefinitely until emergency-only callers can be assured of service, or until digital technologies are fully compatible with hearing aid devices, the Commission concluded that a transition period is necessary to facilitate the orderly migration of consumers with analog handsets to digital multimode handsets. To allay concerns by certain commenters who argued that the analog requirement should not be removed until access to digital devices is assured for emergency-only users, the Commission observed that, although there is a sizable number of emergency-only consumers using analog handsets, it could be assumed that the total number of such users will decline in the future, as digital networks expand and carriers migrate current analog customers to digital services. The Commission concluded that, because subscribers turn over handsets approximately every 18 to 30 months, the five-year transition period should be sufficient to ensure that recipients of donated mobile telephones have access to digital equipment.

17. Similarly, the Commission also found that a five-year period provides a reasonable time frame for the development of solutions to hearing aid-compatibility issues. The progress made in developing digital solutions in other areas caused the Commission to determine that the industry will also likely be able to develop digital solutions for wireless telephones within a five-year period.

18. AWS claims that the Commission's statement indicating that, on average, a consumer owns a handset for 1.5 to 2.5 years before acquiring a new one, supports at most a transition period of 30 months. Too much emphasis, however, is being placed on the statement that the typical recycling period for a handset is 18 to 30 months. In the *Report and Order*, the Commission sought to explain that it was unnecessary to retain the analog requirement indefinitely despite the large numbers of emergency-only callers because it is likely that digital equipment will be made available over time. The Commission surmised that, given that both digital and analog phones are being donated, that digital subscribers outnumber analog phone subscribers, and that there is a rapid turnover rate of phones, *i.e.* a turnover frequency of every 18–30 months, it is likely that a sufficient number of digital phones will be made available to emergency-only consumers by the end of the five-year transition period. The 18–30 month period relates only to the turnover rate of a phone. It was not intended to reflect the time it will take for a donated digital phone to get into the hands of any given emergency-only consumer, much less the period of time necessary to migrate the large numbers of emergency-only callers from analog service. Moreover, although the Commission agrees that there is indeed robust competition in the wireless telephony marketplace, it reiterates that persons with hearing disabilities and emergency-only consumers do not benefit in large part from such competition.

19. Moreover, the Commission recently found that ensuring greater availability of hearing aid-compatible digital phones requires at least a five-year time frame. The Commission determined in the *HAC Report and Order*, 68 FR 54173, September 16, 2003 that it is feasible for certain digital wireless phones to be made hearing aid compatible, and set out certain performance standards as well as a schedule for implementation of those requirements. *See* § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Report and Order*, 68 FR 54173, September 16, 2003. Specifically, the Commission adopted certain performance levels set forth in ANSI C63.19 as a technical standard to govern digital wireless phone compatibility with hearing aids.[2] In the *HAC Report and Order*, the Commission required that, within two years, each digital wireless handset manufacturer and each carrier providing digital wireless services must make commercially available at least two handsets for each interface in its product line which meet the ANSI C63.19 performance level (*i.e.* U3) for acoustic coupling. By the end of three years, manufacturers and carriers must offer at least two digital wireless handsets meeting the U3T performance level of providing telecoil coupling capability for each air interface offered. Further, in order to ensure consumers continued accessibility and a range of product options, the Commission determined that 50 percent of all digital wireless phone models offered by manufacturers and service providers must be compliant with requirements for acoustic coupling by February 18, 2008, the termination date of the five-year transition period. The Commission determined that providing such compatibility in half of all phone models by the end of the five-year transition is a feasible interim goal, and that further progress would be made over time to make even more digital equipment hearing aid-compatible. The Commission concluded, however, that requiring more (*i.e.* extend the requirements to all digital wireless phones in the near term) could not be done given technical and resource difficulties. It is evident then, in light of the Commission's findings in the *HAC Report and Order*, that at least a five-year transition period is required to provide persons with hearing disabilities with adequate access to hearing aid-compatible digital devices.

20. Finally, although the Commission concluded that roaming and interoperability concerns advanced by small and regional carriers as well as telematics providers were not sufficient in themselves to justify an indefinite retention of the analog requirement, the Commission nonetheless determined that the five-year transition period would be useful in mitigating any significant impacts that an immediate elimination of the analog requirement might cause. Indeed, although the concerns expressed by regional carriers and telematics providers derive from business decisions that are generally within the control of the individual provider, the Commission is not unmindful of the potential impacts of the elimination of the analog requirement on these service providers and their customers.

21. In this regard, the Commission continues to believe that the five-year period is desirable to smooth the transition from analog to digital. A five-year time frame will enable regional carriers to evaluate their current and future technology choices as well as those of their current roaming partners, and will provide carriers with adequate time to negotiate new contracts where

[2] ANSI C63.19 is the technical standard developed by Task Group C63.19 of ANSI 63 (the Accredited Standards Committee on Electromagnetic Compatibility) that is predictive of the successful use of digital wireless phones with hearing aids. Hearing aids operate in either acoustic or inductive (*i.e.* telecoil) coupling modes. With respect to acoustic coupling mode, ANSI C63.19 specifies ratings for digital wireless phones, U1 through U4, based on their RF emissions levels, with U1 being the highest emissions and U4 being the lowest emissions. The standard also provides a methodology for rating hearing aids from U1 to U4 based on their immunity to interference, with U1 being the least immune. As to telecoil coupling mode, the ANSI standard specifies the axial field and radial field intensity of the audio signal's magnetic field required for satisfactory operation of digital wireless phones with hearing aids. The standard also specifies ratings for the magnetic field quality of digital wireless phones as well as the immunity of hearing aids to undesired magnetic fields, U1T through U4T. The applicable ANSI C63.19 ratings identified for acoustic and telecoil coupling mode are U3 and U3T, respectively.

needed to ensure the availability of roaming services to their customers. As noted in the *Report and Order*, demand will likely increase for multimode/multiband handsets such that by the end of the five-year period, these handsets should be widely available and customers may choose to migrate to these new handsets depending on their roaming needs. Similarly, a five-year period will give telematics providers time to partner with various carriers to secure service on the carriers' digital networks and develop multimode devices that will provide interoperability and facilitate roaming on digital networks. Further, given the public safety uses of many telematics devices, the five-year transition will allow continued access to such applications for a reasonable period of time until telematics providers are able to switch their customers over to digital technology. Moreover, the transition period will provide additional time for other CMRS providers, particularly Personal Communications Service (PCS) carriers, to further build out their licensed service areas thereby enhancing roaming opportunities for all consumers.

B. It Is Appropriate To Reconsider Dobson Communications' Proposal To Allow Cellular Licensees To Extend, on a Secondary Basis, Into Adjacent Unserved Areas of Less Than 50 Square Miles Without Prior Commission Approval

22. *Background*. The Commission's cellular unserved area rules provide that, once the initial licensee of a market completes a five-year build-out period, the portion of the market that is not being served becomes available for re-licensing. Under the Commission's unserved area rules, carriers are only licensed for areas that they intend to serve, and applications for new cellular systems must propose a contiguous cellular geographical service area of at least 50 square miles. Applications of an entity seeking to establish a new cellular system, or an existing licensee requesting an authorization that would expand its CGSA or that would produce a *de minimis* service area boundary extension into unserved area must be placed on public notice for thirty days.

23. In the *Report and Order*, the Commission addressed proposals by various commenters seeking significant revision of the Commission's unserved area rules. Among the alternatives submitted included a proposal by Dobson which requested that the Commission permit existing licensees to cover adjacent unserved areas of less than 50 square miles on a secondary basis without approval from the Commission. Dobson asserted that the rules regarding unserved areas between a cellular licensee's CGSA and the market boundaries or CGSAs of neighboring licensees impose filing obligations and delays in the introduction of new coverage. Dobson asserted that if it seeks to make engineering modifications to its CGSA-defining cell sites (*i.e.,* sites along the periphery of its CGSA) in order to improve existing coverage inside the CGSA, it must file a major modification application if the modifications cause extensions into unserved area. Dobson argued that because of this extension, a licensee must file a major modification application, wait approximately 60–90 days for the application to be accepted for filing, and wait another 30 days once the public notice is issued before grant can be made.

24. The Commission generally rejected the proposals submitted by Dobson and other commenters, stating that the proposed modifications constituted fundamental changes to the Commission's cellular unserved licensing framework, and as such were beyond the scope of the biennial review. The Commission also noted that, under the current process, it receives approximately 40 unserved area applications each month, and typically processes the applications within 45–60 days. Given the low number of unserved area applications that are filed as well as the speed with which such applications are processed, the Commission was not persuaded that the burdens imposed by a major overhaul of the rules would be offset by any corresponding benefits.

25. In response to the *Report and Order*, Dobson requests reconsideration of the Commission's decision to reject its proposal. Dobson asserts that the reasons advanced by the Commission in rejecting the unserved area proposals appear to have been directed at those advanced by other commenters rather than at Dobson's request. Dobson asserts that the Commission's failure to adopt its specific proposal without advancing any reasons for doing so is contrary to section 11 as well as the fundamental requirements of reasoned decision making. Further, Dobson argues that, consistent with the Commission's current new rural service-oriented initiatives, Dobson's proposal advances and improves service to rural areas and should be adopted upon reconsideration.

26. *Discussion*. While the Commission continues to believe that major changes to its cellular unserved area licensing framework are beyond the scope of a biennial review proceeding, it finds that it is appropriate to reconsider certain aspects of Dobson's request. Unlike proposals advanced by other commenters which sought significant revision to existing rules, Dobson proposes only slight modification to its unserved area rules. The Commission concludes that adopting Dobson's proposal that licensees be allowed to extend into adjacent unserved areas of less than 50 square miles on a secondary basis without prior Commission approval will provide licensees with additional flexibility to respond to operational demands in a manner that remains consistent with its unserved area rules. Moreover, the Commission believes that providing licensees with this added flexibility will help to encourage carriers to expand into rural areas.

27. The Commission does not agree with Dobson's assertion that the cellular unserved area rules are no longer necessary. The basic premise of cellular service licensing is that carriers are only licensed and provided protection from incursions from other licensees for areas that they actually serve. The Commission put in place this licensing scheme to ensure that licensees could not claim as protected CGSA areas that they were not actually serving and prevent other entities from providing service instead. Because a licensee's protected CGSA is defined by actual coverage, it remains necessary for licensees to file for approval with the Commission if it seeks to add new areas to its protected service area. Further, as noted in the *Report and Order*, proposals seeking to significantly overhaul, or remove as unnecessary, the unserved area rules are actually advocating a fundamental change to the Commission's cellular service licensing model, and, as such, are beyond the scope of a biennial review proceeding.

28. While the Commission finds that major changes to its cellular licensing framework are not appropriate here, it nevertheless finds that it should reconsider and adopt Dobson's proposal. The Commission agrees with Dobson's argument that the Commission's licensing rules may be burdensome in certain cases, such as where design changes or engineering modifications aimed only at improving coverage within a licensee's existing CGSA results in an extension into adjacent unserved area. Although the Commission disagrees with Dobson's assertion that there is an inordinate delay in processing applications, it finds that the process is nevertheless burdensome if the licensee is not

actually seeking to expand its service area.

29. The Commission concludes that Dobson's proposal provides licensees with flexibility to respond to operational demands yet remains within the framework of the Commission's existing cellular unserved rules. Any extension would be on a secondary basis only and will not become part of the licensee's CGSA unless the licensee files a major modification application. Although the Commission is permitting carriers to bypass the formal major modification filing process in such circumstances, the Commission will continue to require carriers to notify the Commission as to its actual service contours so that others are on notice of their presence. Licensees may submit such filings as minor modifications through the Commission's Universal Licensing System (ULS). If another licensee is granted approval to incorporate the unserved area as part of its CGSA, the first licensee must pull back its coverage. Because any extension into unserved area will be on a secondary basis only, the proposal provides licensees with operational flexibility while also being consistent with existing unserved area rules because the licensee does not seek to claim the extension as protected CGSA. Moreover, the Commission believes that adopting this proposal may expedite expansion of cellular coverage into rural areas. By providing licensees with the flexibility to extend into unserved areas without first having to go through the major modification filing process, the Commission believes that licensees will be more likely to extend operations into rural areas.

C. The Commission Appropriately Removed § 22.919 Which Set Out Electronic Serial Number Hardware Design Requirements

30. *Background.* In the *Report and Order*, the Commission removed § 22.919 of its rules, which established ESN design requirements for cellular telephone manufacturers. An ESN is a number that uniquely identifies a cellular mobile transmitter to a cellular system. Former § 22.919 required that each cellular mobile unit have an ESN that is not "alterable, transferable, removable or otherwise able to be manipulated.'' The rule also required that equipment be designed in such a way that any attempt to remove, tamper with, or change the ESN chip or other related components would render the mobile transmitter inoperative. This rule section was originally promulgated to address the problem of cellular "cloning'' fraud that was prevalent in the mid-1990s, and which resulted in millions of dollars in losses to the cellular industry. Over the years, however, other measures were developed to combat cloning fraud, such as authentication, radio frequency fingerprinting, and call profiling. Moreover, Congress enacted the Wireless Telephone Protection Act of 1998 (WTPA) to address fraudulent and unauthorized use of wireless telecommunications services. *See* 18 U.S.C.A. 1029. After reviewing the original purpose of the rule, the advanced fraud control technologies measures developed to combat fraud since the adoption of the rule, as well as comments submitted in the proceeding, the Commission concluded that the ESN requirements were no longer necessary as a preventative measure against cellular cloning fraud. The Commission therefore removed § 22.919 of its rules.

31. In response, two entities seek reconsideration of the decision to remove the ESN rule. AWS argues that the ESN rule remains essential to fulfill its original purpose of deterring cloning fraud and reducing incentives to steal handsets. AWS asserts that not only does the Commission's removal of the ESN requirements increase the carrier's risk of fraud, it could also make wireless subscribers a target for thieves seeking expensive "next generation'' handsets for resale. Accordingly, AWS not only requests that the Commission reinstate the ESN hardening rule, it also asks the Commission to extend the requirements to cover all CMRS devices regardless of technology or frequency band. CTIA also asks the Commission to revisit the ESN issue but does not request that the Commission reverse its decision to remove the ESN requirement. Instead, CTIA requests that the Commission remove language in paragraph 39 of the *Report and Order* that stated that analog cellular cloning by legitimate subscribers would no longer be a violation of the Commission's rules. CTIA argues that the language is inconsistent with federal law and Commission policy and has serious consequences with respect to carrier operations.

32. *Discussion.* The Commission is not persuaded by arguments that it must continue to mandate ESN design requirements in order to prevent fraud. The Commission prefers, as a general policy, to allow market forces to determine technical standards wherever possible, and to avoid mandating detailed hardware design requirements for telecommunications equipment, except where doing so is necessary to achieve a specific public interest goal. Although there may be instances in which the Commission concludes that it is necessary to establish specific design requirements, the Commission continues to find that mandating ESN design specifications is no longer necessary or warranted because of other measures that the wireless industry has developed to accomplish the same goal. Moreover, the Commission notes that in removing the ESN requirements from its rules, the Commission was not precluding equipment manufacturers from continuing to produce handsets using ESN hardening. Wireless equipment manufacturers and carriers may continue to utilize hardened ESN as a fraud deterrent if they wish to do so. The Commission also declines to mandate specific design requirements for non-cellular CMRS for the same reasons. The Commission does not currently impose such anti-fraud measures in its rules affecting other CMRS services, and, the Commission is not aware that the industry has had problems with its fraud prevention efforts in the absence of Commission rules requiring that equipment manufacturers design handsets to become inoperable if tampered with.

33. While the Commission finds that the decision to eliminate the ESN design requirements was appropriate, the Commission agrees with CTIA that it is necessary to clarify language in paragraph 39 of the *Report and Order* regarding the use of cellular cloning by legitimate subscribers. The *Report and Order* provided that in the absence of § 22.919, the cloning of phones by legitimate subscribers is not a violation of the Commission's rules but is instead a contractual matter to be judged according to the terms of the applicable contract. CTIA argues that paragraph 39 should be reconsidered for a variety of reasons, for example, that it may encourage entities not affiliated with carriers to offer "cloning service'' to the carriers' subscribers, thereby leading to a panoply of operational problems: Misdirected incoming calls, the inability to make simultaneous calls on handsets with the same MIN/ESN, fraud losses from cloned devices not under the control of the subscriber as well as denial of service by the subscriber's own carrier when the carrier's anti-fraud software is triggered by the cloned handsets.

34.The Commission notes that the language in paragraph 39 was directed toward legitimate cell phone uses as agreed to by carriers and their subscribers. The intent of the paragraph was to allow carriers, in the absence of § 22.919, to examine whether there are permissible, legitimate uses of a cloned

phone by its own subscribers, and, if so, to control such use contractually. In reviewing this matter, however, the Commission agrees that the language in paragraph 39 was imprecise and may be misconstrued. The Commission is certainly cognizant of the operational problems that could occur with phones having the same ESN, and the Commission continues to believe that the altering of cellular phones to emulate ESNs without receiving the permission of the relevant cellular licensee should not be permitted. Accordingly, the Commission clarifies that the fraudulent or unauthorized use of a cloned phone, whether by a third party or a legitimate subscriber, remains prohibited by federal law and by Commission policy.

D. It Is Not Necessary To Further Modify the Commission's Rules Regarding Emission Limits for Cellular and PCS

35. *Background.* In the *Report and Order,* the Commission amended §§ 22.917 and 24.238 of its rules, which specify out-of-band radio frequency emissions limits with respect to cellular and PCS operations. The Commission sought to define the out-of-band emission limits in such a way as to provide an adequate measure of interference protection to other licensees and services in adjacent spectrum, while also allowing licensees the flexibility to establish a different limit where appropriate. The Commission specifically sought to make its rules more technology-neutral in order to encourage greater deployment of advanced technologies. In adopting these changes, the Commission pointed out that, in the Wireless Communications Service (WCS), licensees are provided certain flexibility with respect to operations at the edge of their authorized spectrum. Because the Commission seeks to ensure regulatory uniformity where possible, the Commission found it appropriate to amend §§ 22.917 and 24.238 to also provide similar flexibility to cellular and PCS licensees regarding emissions limits. Also, the specific language adopted for the modified rules is consistent with International Telecommunications Union (ITU) standards for emissions.

36. Lucent argues that the measurement procedures for emissions in §§ 22.917(b) and 24.238(b), as modified in the *Report and Order,* subjects carriers that employ Universal Mobile Telecommunications Systems (UMTS) to more stringent requirements than carriers that deploy CDMA2000. Lucent argues that because a UMTS system would be operating on a wider bandwidth than a CDMA2000 system, a UMTS carrier may not operate as close to the edge of its assigned spectrum at the same transmitting power as a CDMA2000 carrier. Lucent believes that emissions from either CDMA2000 or UMTS spread spectrum systems into the spectrum immediately outside and adjacent to the frequency block will be similar, and that the emission limitations should not discriminate between these spectrum technologies.

37. *Discussion.* The Commission finds insufficient basis to further modify §§ 22.917 and 24.238 as requested by Lucent. The changes made to §§ 22.917 and 24.238 in the *Report and Order* enable licensees to operate transmitters on frequencies closer to the edge of their authorized spectrum than full compliance with §§ 22.917 and 24.238 would normally allow by modifying how out-of-band emissions are measured. Sections 22.917 and 24.238 affect how close to the edge of its authorized spectrum that a licensee may operate as a function of the emission bandwidth in which it operates. In other words, the emissions standard is one of proportionality: the wider the bandwidth used by a licensee, the farther the licensee must operate from the edge of its assigned spectrum in order to avoid affecting operations in adjacent spectrum.

38. Although Lucent argues that the Commission's rules regarding out-of-band emissions impose greater restrictions on UMTS as compared with CDMA2000, §§ 22.917 and 24.238 in fact apply the same emissions requirement on both types of systems. The Commission finds that the modifications previously made to §§ 22.917 and 24.238 were sufficient to provide ample flexibility to licensees, while also treating all technologies consistently, and, accordingly, the Commission declines to further modify these rules.

III. Procedural Matters

A. Supplemental Regulatory Flexibility Act Certification

39. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities.'' *See* 5 U.S.C. 605(b). The RFA generally defines "small entity'' as having the same meaning as the terms "small business,'' "small organization,'' and "small governmental jurisdiction.'' *See* 5 U.S.C. 601(b). In addition, the term "small business'' has the same meaning as the term "small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3). A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration. As required by the RFA, a Final Regulatory Flexibility Analysis was incorporated in the *Report and Order.* This Supplemental Final Regulatory Flexibility Analysis is limited to matters raised on reconsideration.

40. In this *Order on Reconsideration,* the Commission affirms the decision to establish a five-year sunset period for the analog requirement. The Commission also affirms the decision to remove the rule section governing electronic serial numbers in cellular telephones, but clarify that the fraudulent and unauthorized use of ESNs remains contrary to federal law and Commission policy. Further, the Commission reconsiders and adopts a proposal to permit, in certain circumstances, cellular carriers to extend on a secondary basis into neighboring unserved without prior Commission approval. The Commission also declines a request to further modify its rules regarding emission limitations.

41. The general effect of this decision on small business entities will be to allow cellular carriers to avoid processing delays only in certain situations. Otherwise, the *Order on Reconsideration* affirms or codifies decisions previously made in the *Report and Order.* Accordingly, the Commission certifies that this decision will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Order on Reconsideration* including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act Analysis

42. The *Order on Reconsideration* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose modified recordkeeping requirements or burdens on the public. Implementation of these modified reporting or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) and will go into effect upon publication in the **Federal Register** of OMB approval.

IV. Ordering Clauses

43. Pursuant to sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 222 and 227; and § 1.429 of the Commission's Rules, 47 CFR 1.429, this *Order on Reconsideration* in WT Docket No. 01–108 is adopted. The *Order on Reconsideration* will be effective June 1, 2004, except for a provision in the *Order on Reconsideration* permitting cellular carriers to extend into unserved areas of less than fifty square miles on a secondary basis that is not effective until approved by the Office of Management and Budget (OMB) because it modifies information collection requirements. The agency will publish a document in the **Federal Register** announcing the effective date of the modified information collection.

List of Subjects in Parts 22 and 24

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–6822 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–717, MB Docket No. 02–260, RM–10502, 10833]

Radio Broadcasting Services; Freer, Hebbronville, and Orange Grove, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal filed by La Nueva Cadena Radio Luz, Inc., licensee of Station KEKO(FM), Hebbronville, Texas by substituting Channel 269C2 for Channel 269A and reallotting Channel 269C2 from Hebbronville to Orange Grove, Texas, as its first local aural transmission service and modifying the Station KEKO(FM) license accordingly. Channel 269C2 can be allotted to Orange Grove, in compliance with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction 28.6 kilometers (17.8 miles) west of the community. The reference coordinates for Channel 269C2 at Orange Grove are 28–00–01 NL and 98–13–24 WL. This document also denies the Petition for Rulemaking filed by Linda Crawford, requesting the allotment of Channel 271A at Freer, Texas, as that community's third local aural transmission service.

DATES: Effective May 3, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 02–260 adopted March 17, 2004, and released March 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision 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.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 269A at Hebbronville and by adding Orange Grove, Channel 269C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7368 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–738; MB Docket No. 03–57; RM–10565]

Radio Broadcasting Services; Fort Collins, Westcliffe & Wheat Ridge, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking,* 68 FR 16750, April 7, 2003, this document grants a petition for rulemaking filed by Tsunami Communications, Inc., former licensee of Station KTCL, Fort Collins, Colorado, substituting Channel 227C0 for Channel 227C at Fort Collins, CO, and reallotment of Channel 227C0 to Wheat Ridge, CO, as a first local service, with the license modified to specify operation on Channel 227C0 at Wheat Ridge. Jacor Broadcasting of Colorado, Inc. is the current licensee of Station KTCL. To accommodate Channel 227C0 at Wheat Ridge, we shall also substitute Channel 249A for vacant Channel 227A at Westcliffe, CO. The coordinates for Channel 227C0 at Wheat Ridge are 39–40–18 and 105–07–32 and the coordinates for Channel 249A at Westcliffe are 38–03–21 and 105–30–02. The counterproposal filed by Meadowlark Group, Inc. has been dismissed. With this action this proceeding is terminated.

DATES: Effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. No. 03–57, adopted March 17, 2004, and released March 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. 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.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended 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.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 227C at Fort Collins and adding Wheat Ridge, Channel 227C0 and by removing Channel 227A and adding Channel 249A at Westcliffe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7370 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–735; MB Docket No. 03–245, RM–10826]

Radio Broadcasting Services; Durant, Oklahoma and Whitewright, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 68 FR 74202 (December 23, 2003) this *Report and Order* dismisses the Petition for Rule Making in MB Docket No. 03–245 proposing to reallot Channel 248C2 from Durant, Oklahoma, to Whitewright, Texas. The petitioner had requested this dismissal.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–245, adopted March 17, 2004, and released March 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The 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.* This document is not subject to the Congressional Review Act.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7371 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–736]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 4 FCC Rcd 2413 (1989), and Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 17, 2004, and released May 19, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 270C and adding Channel 270C0 at Fort Myers

■ 3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 256C and adding Channel 256C0 at Greenwood.

■ 4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 299C and adding Channel 299C0 at St. Louis.

■ 5. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 283C1 and adding Channel 284C1 at Big Sky.

■ 6. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 266C3 and adding Channel 266C2 at White Rock.

■ 7. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 228C2 and adding Channel 228C3 at Lakeview.

■ 8. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 224A and adding Channel 224C2 at South Padre Island.

■ 9. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 290C3 and adding Channel 288C2 at Vernal.

■ 10. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 291C3 and adding Channel 291C at Evanston.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7372 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 63
Thursday, April 1, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–319–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A series airplanes. This proposal would require replacing certain power wires with a modification harness; and testing the new harness installation. These actions are necessary to prevent a momentary loss of data on the left-hand electronic flight instrumentation system (LH EFIS) screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane. These actions are intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–319–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–319–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A series airplanes. The LFV advises that a momentary power bus voltage drop caused by a high inrush current to the hydraulic pump occurs when the pump starts to supply hydraulic power to the landing gear and/or flaps. This voltage drop could cause a momentary loss of data on the left-hand electronic flight instrumentation system (LH EFIS) screens. This condition, if not corrected, could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–29–021, Revision 02, dated October 2, 2002, which describes procedures for replacing certain power wires with a modification harness; and testing the new harness installation. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–179, dated October 2, 2002, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $5,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $89,400, or $7,450 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 2002–NM–319–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer serial number –004 through –028 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a momentary loss of data on the left-hand electronic flight instrumentation system (LH EFIS) screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane, accomplish the following:

Replacement and Test

(a) Within 12 months after the effective date of this AD, replace certain power wires with a modification harness, and test the harness installation; by doing all of the actions in, and in accordance with, the Accomplishment Instructions of Saab Service Bulletin 340–29–021, Revision 02, dated October 2, 2002.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Swedish airworthiness directive 1–179, dated October 2, 2002.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7291 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–126–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and –400D series airplanes. This proposal would require an inspection to detect missing fasteners in the section 42 skin and internal doubler at the cutout for the ground exhaust valve of the electrical equipment; modification and rework of the doubler; repetitive inspections of the skin for cracks; and corrective actions if necessary; as applicable. This action is necessary to detect and correct fatigue cracks in the section 42 skin at the cutout for the ground exhaust valve of the electrical equipment, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–126–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the

Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–126–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during full-scale fatigue testing on a Boeing Model 747–400 fatigue test article, skin cracks were found at a skin cutout for the ground exhaust valve of the electrical equipment. One of the cracks was 18 inches long and was found at 33,000 total pressurization cycles. The configuration of the internal doubler installed around the cutout creates stress concentrations in the skin, which causes fatigue cracking of the skin. Also, Boeing records show that some fasteners may not have been installed on the skin doubler on certain Boeing Model 747–400 and –400D series airplanes during production. Fatigue cracks in the section 42 skin at the cutout for the ground exhaust valve of the electrical equipment, if not detected and corrected, could result in rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003, which describes the following procedures:

- For Group 1 airplanes: A general visual inspection to detect missing fasteners in the section 42 skin and internal doubler at the cutout for the ground exhaust valve of the electrical equipment, and applicable corrective actions, which include performing an open hole high frequency eddy current (HFEC) inspection for cracks and any applicable repair, oversizing and drilling of holes, and installing fasteners.
- For Group 1 and Group 2 airplanes: Modification and rework of the internal doubler, which includes performing an open hole HFEC inspection for cracks and any applicable repair, oversizing and drilling of holes, and installing fasteners.
- For Group 1 through Group 4 airplanes: Repetitive external HFEC inspections of the skin for cracks, and repair if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators should note that, although the service bulletin does not list a grace period in certain compliance times, this proposal adds a grace period to the compliance times. The FAA finds that such a grace period will keep airplanes from being grounded unnecessarily.

Clarification of Procedures in Service Bulletin

Part 3 of the Accomplishment Instructions of the service bulletins specifies to ''Do a HFEC inspection of the skin and doubler as shown in FIGURE 8 for Group 1, 2 and 3 Airplanes and as show[n] in FIGURE 9 for Group 4 Airplanes.'' The correct area to accomplish this HFEC inspection is on the skin around the edge of the doubler, as specified in Figures 8 and 9.

Cost Impact

There are approximately 142 airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin 747–53A2340, it would take approximately 1 work hour per airplane to accomplish the proposed inspection (Part 1), at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $65 per airplane.

For Groups 1 and 2 airplanes listed in Boeing Alert Service Bulletin 747–53A2340, it would take approximately 40 work hours per airplane to accomplish the proposed modification and rework (Part 2), at an average labor rate of $65 per work hour. Based on

these figures, the cost impact of this modification and rework proposed by this AD on U.S. operators is estimated to be $2,600 per airplane.

For Groups 1 through 4 airplanes listed in Boeing Alert Service Bulletin 747–53A2340, it would take approximately 1 work hour per airplane to accomplish the proposed inspection (Part 3), at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $65 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–126–AD.

Applicability: Model 747–400 and −400D series airplanes, as listed in paragraph 1.A., ''Effectivity,'' of Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the section 42 skin at the cutout for the ground exhaust valve of the electrical equipment, which could result in rapid decompression of the airplane, accomplish the following:

Part 1—Fastener Inspection and Corrective Actions If Necessary

(a) For Group 1 airplanes listed in Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003: Within 250 flight cycles or 4 months after the effective date of this AD, whichever occurs later, do a general visual inspection to detect missing fasteners in the section 42 skin and internal doubler at the cutout for the ground exhaust valve of the electrical equipment, per Part 1 of the Accomplishment Instructions of the service bulletin.

(1) If all fasteners are installed, do the actions specified in paragraph (b) of this AD at the indicated time.

(2) If any fastener is missing, before further flight, accomplish all applicable corrective actions (*i.e.*, performing an open hole high frequency (HFEC) inspection for cracks and any applicable repair, oversizing and drilling of holes, and installation of fasteners), in accordance with Part 1 of the Accomplishment Instructions of the service bulletin, except as required by paragraph (f) of this AD.

Part 2—Modification and Rework

(b) For Group 1 and Group 2 airplanes listed in Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003: Before the accumulation of 6,000 total flight cycles, or within 1,500 flight cycles or 24 months after the effective date of this AD, whichever occurs later: Modify and rework the internal doubler (*i.e.*, performing an open hole HFEC inspection for cracks and any applicable repair, oversizing and drilling of holes, and installation of fasteners) by accomplishing all actions specified in Part 2 of the Accomplishment Instructions of the service bulletin. Do the actions per the service bulletin, except as required by paragraph (f) of this AD. Any applicable repair must be accomplished before further flight.

Part 3—Repetitive Inspections and Repair If Necessary

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, do an external HFEC inspection of the skin for cracks per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003.

(1) For Group 1 and Group 2 airplanes listed in the service bulletin: Within 10,000 flight cycles after accomplishing the actions required by paragraph (b) of this AD, or within 1,500 flight cycles or 24 months after the effective date of this AD, whichever occurs later.

(2) For Group 3 and Group 4 airplanes listed in the service bulletin: Before the accumulation of 15,000 total flight cycles, or within 1,500 flight cycles or 24 months after the effective date of this AD, whichever occurs later.

(d) If no crack is detected during the external HFEC inspection required by paragraph (c) of this AD, repeat the external HFEC inspection thereafter at intervals not to exceed 5,000 flight cycles.

(e) If any crack is detected during the external HFEC inspection required by paragraph (c) of this AD, before further flight, repair per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2340, Revision 2, dated April 24, 2003, except as required by paragraph (f) of this AD. Repeat the external HFEC inspection in the unrepaired areas thereafter at intervals not to exceed 5,000 flight cycles.

Exception to Service Bulletin Actions

(f) If any discrepancy is found during any inspection required by this AD, and the bulletin specifies to contact Boeing for an alternate repair: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Credit for Previous Revisions of Service Bulletins

(g) Actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2340, original issue, dated August 1, 1991; or Revision 1, dated October 31, 1991, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

(2) An AMOC that provides an acceptable level of safety may be used for any inspection or repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to

make such findings. For an inspection or repair method to be approved, the approval must specifically reference this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7289 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–254–AD]

RIN 2120–AA64

Airworthiness Directives; Aircraft Equipped With Garmin AT, Apollo GX Series Global Positioning System (GPS) Navigation Units With Software Versions 3.0 Through 3.4 Inclusive

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to aircraft equipped with Garmin AT, Apollo GX series GPS navigation units with software versions 3.0 through 3.4 inclusive. This proposal would require modification and testing of the software for Apollo GX50/55/60/65 TSO–C129a GPS navigation units; and reidentification of the part. This action is necessary to prevent the GPS navigation unit, under certain conditions, from providing erroneous cross-deviation information, which could result in the aircraft deviating from its intended course for a brief period of time. Erroneous information may also place an excessive workload on the flightcrew while they monitor other available navigation data to avoid deviating off course. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–254–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Garmin AT, 2345 Turner Road Southeast, Salem, Oregon 97302. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Cameron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6460; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–254–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the manufacturer of the global positioning system (GPS) navigation unit indicating that, under certain conditions, Apollo GX50/55/60/65 TSO–C129a GPS navigation units, with software versions 3.0 through 3.4 inclusive, installed on any aircraft could provide erroneous cross-track deviation information. This condition, if not corrected, could result in the aircraft deviating from its intended course for a brief period of time. Erroneous information may also place an excessive workload on the flightcrew while they monitor other available navigation data to avoid deviating off course.

Explanation of Relevant Service Information

The FAA has reviewed and approved UPS Aviation Technologies Service Bulletin 561–4002–001, dated April 19, 2002, which describes procedures for modifying software versions 3.0 through 3.4 inclusive for Apollo GX50/55/60/65 TSO–C129a GPS navigation units with software version 3.5 and testing the modified software; and reidentifying of the modified part. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Service Bulletin

Operators should note that although the service bulletin recommends accomplishing the software modification ''at the earliest opportunity where manpower and facilities are

available,'' we have determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (1 hour). In light of all of these factors, we find that a 6-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Cost Impact

We do not know how many aircraft equipped with Apollo GX series GPS navigation units (software versions 3.0 through 3.4 inclusive) of the affected design are on the U.S. Register. However, we do know that the GPS navigation units might be installed on 1,176 aircraft worldwide. It would take approximately 1 work hour per aircraft to accomplish the proposed modification, at an average labor rate of $65 per work hour. The parts manufacturer would provide the required parts at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $65 per aircraft.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Garmin AT (formerly UPS Aviation Technologies, Inc.): Docket 2002–NM–254–AD.

Applicability: Aircraft equipped with Garmin AT, Apollo GX50/55/60/65 TSO–C129a global positioning system (GPS) navigation units with software versions 3.0 through 3.4 inclusive; as listed in UPS Aviation Technologies Service Bulletin 561–4002–001, dated April 19, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the GPS navigation unit, under certain conditions, from providing erroneous cross-deviation information, which could result in the aircraft deviating from its intended course for a brief period of time; and to also prevent erroneous information from placing an excessive workload on the flightcrew while they monitor other available navigation data to avoid deviating off course; accomplish the following:

Software Modification, Testing, and Reidentification

(a) Within 6 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, according to the Accomplishment Instructions of UPS Aviation Technologies Service Bulletin 561–4002–001, dated April 19, 2002.

(1) Modify and test the software for the Apollo GX50/55/60/65 TSO–C129a GPS navigation unit by accomplishing all of the actions specified in paragraphs 3.B. and 3.C of the service bulletin.

(3) Reidentify the modified Apollo GX50/55/60/65 TSO–C129a GPS navigation unit, according to paragraph 3.D. of the service bulletin.

Alternative Methods of Compliance

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

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7288 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require inspection of the main landing gear's (MLG) separation bolt harness, corrective actions if necessary, and replacement of the MLG's separation bolt harness. For certain airplanes, this proposal would also require modification of the MLG separation bolt's electrical harness. These actions are necessary to prevent failure of the MLG to extend during use of the emergency backup system. These actions are intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–

17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–17–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. LFV advises that it has received a number of reports of broken wires and corroded connectors in the harness for the separation bolt. The cause has been attributed to repairs and installations that have not been accomplished in accordance with the type design. If the system harness is incorrectly installed or repaired, the function of the separation bolt will be inhibited, and consequently the emergency system for landing gear extension will not be fully available. This condition, if not corrected, could result in failure of the main landing gear to extend during use of the emergency backup system.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–32–127, dated December 18, 2002; and Revision 01, dated January 23, 2003, which describes procedures for inspection of the MLG's separation bolt harness, and corrective actions, if necessary. The corrective actions involve modifications to the separation bolt harness's wires, clamps, convolex tube, and shrinkable tube, as applicable. Saab has also issued Service Bulletin 340–32–128, dated March 28, 2003, which describes procedures for replacement of the separation bolt harness of the MLGs with a new improved harness.

For certain airplanes, Saab Service Bulletin 340–32–128 recommends prior or concurrent accomplishment of the Accomplishment Instructions of Saab Service Bulletin 340–32–041, Revision 1, dated October 9, 1987. The Accomplishment Instructions describe procedures for modification of the separation bolt harness. The modification includes the lengthening of the existing electrical harness for the explosive bolt with a new, improved electrical harness, and the rerouting and securing of the existing harness.

For certain airplanes, Saab Service Bulletin 340–32–041 recommends prior or concurrent accomplishment of the Accomplishment Instructions of Saab Service Bulletin 340–32–028, Revision 01, dated November 25, 1986. The Accomplishment Instructions describe procedures for modification of the separation bolt harness. The modification includes adding a shrink sleeve to the separation bolt squib electrical connectors, and re-routing the separation bolt ground wires at the wheel well structure.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. LFV classified these service bulletins as mandatory and issued Swedish airworthiness directives 1–186, dated December 20, 2002, and 1–189, dated April 1, 2003, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry would be affected by this proposed AD. The following table

shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $65 per work hour.

For certain model	Action	Number of airplanes affected	Work hours	Parts cost	Total cost
SAAB SF340A and SAAB 340B series airplanes.	Inspection of the harnesses	224	4	(1)	58,240, or $260 per airplane.
SAAB SF340A and SAAB 340B series airplanes.	Replacement of the harnesses	224	12	$2,100	$645,120, or $2,880 per airplane.
SAAB SF340A and SAAB 340B series airplanes.	Modification of the harnesses	56	2	$1,475	$89,880, or $1,605 per airplane.
SAAB SF340A and SAAB 340B series airplanes.	Modification of the harnesses	40	1	(1)	2,500, or $65 per airplane.

[1] None.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 2003–NM–17–AD.

Applicability: Model SAAB SF340A series airplanes with serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes with serial numbers 160 through 459 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) to extend during use of the emergency backup system, accomplish the following:

Inspection and Corrective Actions

(a) Within 3 months after the effective date of this AD, perform an inspection of the MLG's separation bolt harness for broken wires and corroded connectors, and any applicable corrective actions by doing all of the actions in the Accomplishment Instructions of Saab Service Bulletin (SB) 340–32–127, dated December 18, 2002; or Revision 01, dated January 23, 2003. Perform the inspection/corrective actions in accordance with the service bulletin. Perform any applicable corrective actions before further flight.

Replacement

(b) Within 12 months after the effective date of this AD, replace the separation bolt harnesses of the MLGs with new separation bolt harnesses in accordance with the Accomplishment Instructions of Saab SB 340–32–128, dated March 28, 2003.

(c) The inspection required by paragraph (a) of this AD is not required for airplanes on which the replacement required by paragraph (b) of this AD is done within the compliance time specified in paragraph (a) of this AD.

Concurrent Service Bulletins

(d) For Model SAAB SF340A series airplanes: Prior to or concurrent with accomplishment of paragraph (b) of this AD, do the actions specified in Table 1 of this AD, as applicable.

TABLE 1.—PRIOR/CONCURRENT ACTIONS

For airplanes with serial numbers—	Accomplish all actions associated with—	According to the accomplishment instructions of—
004 through 108 inclusive	Modifying the MLG separation bolt's electrical harness.	Saab SB 340–32–041, Revision 01, dated October 9, 1987.
004 through 078 inclusive	Modifying the MLG separation bolt's electrical harness.	Saab SB 340–32–028, Revision 01, dated November 25, 1986.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Swedish airworthiness directives 1–186,

dated December 20, 2002, and 1–189, dated April 1, 2003.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7287 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 and 767–300F Series Airplanes Equipped With General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 and 767–300F series airplanes equipped with General Electric or Pratt & Whitney engines. This proposal would require reworking the wing-to-strut diagonal braces and the aft pitch load fittings of the wings, and reinstalling the diagonal braces with new fuse pins and associated hardware. For certain airplanes, this proposal would require replacing the bushings of the aft pitch load fittings, installing new fuse pins, and reworking the fittings, as applicable. This action is necessary to prevent undetected loss of the diagonal brace fuse pins of the wings and consequent increased loads in other wing-to-strut joints, which could result in separation of the struts and engines from the wings. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–186–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, following the loss of the upper link or midspar load paths, the fuse pin of a wing-to-strut diagonal brace of the wing for certain Boeing Model 767–300 and 767–300F series airplanes equipped with General Electric or Pratt & Whitney engines does not meet the minimum damage tolerance requirements. The fuse pin of the diagonal brace showed early fatigue cracks during damage tolerance testing. The load path of diagonal braces is part of the engine strut-to-wing load path. Early fatigue cracks of the fuse pins of the diagonal braces, if not corrected, could lead to loss of the fuse pins and consequent increased loads in other wing-to-strut joints, which could result in separation of the struts and engines from the wings.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003. The alert service bulletin describes procedures for removing and reworking the wing-to-strut diagonal braces of the wings, including replacing the end fittings of the braces with new fittings; reworking the aft pitch load fittings of the wings, including replacing the fitting bushings with new bushings; and reinstalling the diagonal braces with new fuse pins and associated hardware. For certain airplanes, the alert service bulletin describes procedures for replacing the bushings of the aft pitch load fittings with new bushings, reworking the aft pitch load fittings, and installing new fuse pins.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between Proposed Rule and Service Bulletin

Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003, specifies a compliance time of ''within six (6) years or 12,000 flight-cycles from the airplane delivery date, whichever is first, or if beyond this threshold, within 18 months from the issue date of Revision 2 to this service bulletin,'' for the proposed removal and rework.

However, this proposed AD would require accomplishment of the proposed removal and rework at the later of the following times:

- Prior to the accumulation of 12,000 total flight cycles, or within 6 years after the date of issuance of the original Airworthiness Certificate or the Export Certificate of Airworthiness, whichever occurs first.
- Within 18 months after the effective date of this AD.

This decision is based on our determination that ''date of delivery'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Cost Impact

There are approximately 92 airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 14 and 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $18,704 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $1,039,542 and $1,073,992, or between $19,614 and $20,264 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–186–AD.

Applicability: Model 767–300 and 767–300F series airplanes, equipped with General Electric or Pratt & Whitney engines; as listed in Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected loss of the diagonal brace fuse pins of the wings and consequent increased loads in other wing-to-strut joints, which could result in separation of the struts and engines from the wings, accomplish the following:

Rework and Reinstallation

(a) Remove and rework the diagonal braces of the engine nacelles/pylons, rework the aft pitch load fittings of the wings, and reinstall the diagonal braces with new fuse pins and associated hardware by doing all actions specified in steps 3.B.1. through 3.B.11. inclusive, of the Work Instructions of Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003. Do the actions per the service bulletin. Do the actions at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 6 years after the date of issuance of the original Airworthiness Certificate or the export Certificate of Airworthiness, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

Additional Work For Airplanes Modified per the Original Issue of the Service Bulletin

(b) For airplanes modified per Boeing Service Bulletin 767–54–0096, dated August 31, 2000: Within 18 months after the effective date of this AD, replace the bushings of the aft pitch load fittings of the wings with new bushings, rework the aft pitch load fittings, and install new fuse pins, by doing all actions specified in steps 3.B.1. through 3.B.10. inclusive, of the Additional instructions of Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003.

Alternative Methods of Compliance

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

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

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft certification Service.

[FR Doc. 04–7286 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that currently requires repetitive inspections to verify operation of the remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. This action would require the existing actions per a later service bulletin revision. The actions specified by the proposed AD are intended to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–76–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–76–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 28, 2000, the FAA issued AD 2000–15–14, amendment 39–11846 (65 FR 48362, August 23, 2000), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, to require repetitive inspections to verify operation of the remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. That action was prompted by incidents in which certain RCCBs of the AC cabin bus switch failed when the switch was pushed to the ''OFF'' position. The requirements of that AD are intended to prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable RCCB of the AC cabin bus switch during smoke and fume isolation procedures.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the airplane manufacturer has informed the FAA that Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000 (referenced in AD 2000–15–14 as the appropriate source of service information for the required actions), specifies correct ''Item Numbers'' for the affected RCCBs, but for some airplane groups, specifies wrong part numbers. As a result, operators may not have inspected all of the affected RCCBs. Therefore, we have determined that it is necessary to reinspect all RCCBs.

Explanation of Relevant Service Information

The FAA has reviewed and approved Revision 1 of Boeing Alert Service Bulletin MD11–24A181, dated July 11, 2003. The repetitive inspections and corrective actions if necessary in this revision are identical to those described in the original issue of the service bulletin. Revision 1 changes group effectivity for 72 airplanes and adds disposition recommendations for failed RCCBs. Accomplishment of the actions specified in the service bulletin is intended to address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would supersede AD 2000–15–14 to continue to require repetitive inspections to verify operation of the RCCBs of the AC cabin bus switch, and replacement of any discrepant RCCB with a new RCCB. The proposed AD also would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as discussed below. Accomplishment of the initial inspection per Revision 1 ends the existing repetitive inspections, which are done per the original issue of the service bulletin.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for sending failed RCCBs to the circuit breaker manufacturer for analysis and for reporting inspection findings and the result of the analysis to the airplane manufacturer, this proposed AD would not require those actions. The FAA does not need this information from operators.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to reference Revision 1 of the service bulletin as the appropriate source of service information. As discussed above, the effectivity listing of this revision specifies the current groupings of affected airplanes.

In addition, McDonnell Douglas Model MD –11F series airplanes were not specifically identified in the applicability of AD 2000–15–14. However, those airplanes were identified by manufacturer's fuselage numbers (MFN) in Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes). Therefore, we have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models (*i.e.*, Model MD –11 and –11F airplanes).

Cost Impact

There are approximately 197 airplanes of the affected design in the worldwide fleet. The FAA estimates that 81 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2000–15–14 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $5,265, or $65 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 1 or 2 work hours per airplane (depending on airplane configuration) to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection requirements of this AD on U.S. operators is estimated to be $65 or $130 per airplane (depending on airplane configuration), per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11846 (65 FR 48362, August 23, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–76–AD. Supersedes AD 2000–15–14, Amendment 39–11846.

Applicability: Model MD–11 and–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent propagation of smoke and fumes in the cockpit and passenger cabin due to an inoperable remote control circuit breakers (RCCB) of the alternating current (AC) cabin bus switch during smoke and fume isolation procedures, accomplish the following:

Requirements of AD 2000–15–14, Amendment 39–11846

Inspection

(a) Within 45 days after August 23, 2000 (the effective date of AD 2000–15–14), perform an inspection to verify operation of the RCCB's of the AC cabin bus switch in accordance with Boeing Alert Service Bulletin MD11–24A181, dated June 27, 2000.

Condition 1 (Proper Operation): Repetitive Inspections

(1) If all RCCBs are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Condition 2 (Improper Operation): Replacement and Repetitive Inspections

(2) If any RCCB is not operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

New Actions Required by This AD

Inspection

(b) Within 45 days after the effective date of this AD, perform an inspection to verify operation of the RCCBs of the AC cabin bus

switch in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A181, Revision 1, dated July 11, 2003. Accomplishment of this inspection ends the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD.

Condition 1 (No Circuit Breaker Failure): Repetitive Inspections

(1) If all RCCBs are operating properly, repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Condition 2 (Circuit Breaker Failure): Replacement and Repetitive Inspections

(2) If any RCCB is not operating properly, prior to further flight, replace the failed RCCB with a new RCCB in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Difference Between AD and Referenced Service Bulletin

(c) Although the service bulletin referenced in this AD specifies to submit certain information to the airplane and circuit breaker manufacturers, this AD does not include such a requirement.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously per AD 2000–15–14, amendment 39–11846, are approved as alternative methods of compliance with this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7360 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. This proposal would require initial and repetitive inspections of certain frame stiffeners to detect cracking. If any cracking is found, this proposal would require replacement of the stiffener with a new, reinforced stiffener. Replacement of the stiffener would constitute terminating action for certain inspections. This proposal would also require a one-time inspection of any new, reinforced stiffeners; and repair or replacement of the new, reinforced stiffener if any cracking is found during the one-time inspection. This proposal also provides for an optional terminating action for certain requirements of this AD. This action is necessary to prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–256–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–256–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330, A340–200, and A340–300 series airplanes. The DGAC advises that, during a scheduled inspection, cracks were detected at the upper horizontal flange of the frame 12A stiffener fitting at the level of the floor cross beam attachment on both the left-hand and right-hand sides of the airplane. These cracks were caused by a high level of longitudinal forces at the fitting, which

came from cabin pressurization and bending induced by thermal effects. This condition, if not corrected, could result in fatigue failure of the fitting, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; and Service Bulletin A340–53–4141, Revision 01, dated July 7, 2003. These service bulletins describe procedures for conducting a high-frequency eddy current (HFEC) inspection of the FR12A stiffener fitting to detect cracking. These service bulletins permit further flight with stiffeners that are cracked within certain limits.

For airplanes on which no cracking is detected, these service bulletins describe procedures for repeating the HFEC inspection for each side on which no cracking is found, until replacement of the FR12A stiffener fitting with a new, reinforced fitting.

For airplanes on which cracking is found, these service bulletins describe procedures for replacing the damaged stiffener with a new, reinforced stiffener fitting; and for conducting a final HFEC inspection of the stiffener fitting at a specified interval following the installation. This replacement eliminates the need for the repetitive inspections described previously, only for the side on which the replacement is made.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2003–205(B), dated May 28, 2003, and 2003–206(B), dated May 28, 2003, to ensure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletin A330–53–3130, Revision 01, dated October 10, 2003; and Service Bulletin A340–53–4137, Revision 01, dated October 10, 2003. These service bulletins describe procedures for replacing the FR12A stiffeners with new, reinforced stiffeners; installing new, reinforced junction fittings between FR12A/FR13 and FR13/FR13A at the stringer 26 level; and installing a new shear web that joins the fitting to the cabin floor track. This replacement eliminates the need for the repetitive inspections and the final HFEC inspection described previously, only for the side on which the replacement is made.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus Service Bulletins A330–53–3135, and A340–53–4141, described previously, except as discussed below. This proposed AD also would provide for optional terminating action for certain repetitive inspections.

Consistent with the findings of the DGAC, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Among the Proposed Rule, the Service Bulletins, and the French Airworthiness Directives

Although the French airworthiness directives and Service Bulletins A330–53–3135 and A340–53–4141 recommend accomplishing the initial inspection before the accumulation of 13,000 total flight cycles, we find that a compliance time of within 13,000 flight cycles or 6 months after the effective date of the proposed AD, whichever occurs later, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (4 hours).

Operators should note that, unlike the procedures described in Service Bulletins A330–53–3135 and A340–53–4141, this proposed AD would not permit further flight with any cracking detected in the fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all fittings that are cracked must be replaced prior to further flight.

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain conditions, this proposal would require operators to repair those conditions or replace per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair or replacement that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair or replacement approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Although the Accomplishment Instructions of Service Bulletins A330–53–3135 and A330–53–4141 describe procedures for submitting certain information to the manufacturer, this proposed AD would not require those actions.

Cost Impact

The FAA estimates that 9 Model A330 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $260 per airplane, per inspection cycle.

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

If an operator chooses to do the optional terminating action rather than continue the repetitive inspections, it would take about 74 work hours per airplane to accomplish the installations, at an average labor rate of $65 per work hour. Required parts would cost about

$7,860 per airplane. Based on these figures, we estimate the cost of this optional terminating action to be $12,670 per airplane.

Currently, there are no affected Model A340–200 or A340–300 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it would take approximately 4 work hours to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this AD to be $260 per airplane, per inspection cycle.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AIRBUS: Docket 2003–NM–256–AD.

Applicability: Model A330 series airplanes; and Model A340–200 and A340–300 series airplanes; except those on which Airbus Modification 49694 has been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Within 13,000 flight cycles or 6 months after the effective date of this AD, whichever occurs later: Conduct a high-frequency eddy current (HFEC) inspection for cracking of the FR12A stiffener fitting in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4141, Revision 01, dated July 7, 2003 (for Model A340–200 and A340–300 series airplanes); as applicable. Repeat the inspection at intervals not to exceed 10,000 flight cycles until the replacement required by paragraph (b) of this AD is accomplished; or until the optional terminating action in paragraph (d) of this AD is accomplished. The actions in paragraphs (b) and (d) of this AD constitute terminating action for the repetitive inspections only for the side on which the actions are taken.

Replacement

(b) If any crack is detected during any inspection required by paragraph (a) of this AD: Before further flight, replace the affected FR12A stiffener with a new reinforced FR12A stiffener in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4141, Revision 01 (for Model A340–200 and A340–300 series airplanes); as applicable. Replacement of the stiffener constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, only for the side on which the replacement is made.

Follow-On Inspection

(c) For airplanes on which a new, reinforced stiffener is installed in accordance with paragraph (b) of this AD: Within 14,600 flight cycles following the installation, perform an HFEC inspection of the FR12A stiffener fitting for cracking in accordance with Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; or Airbus Service Bulletin A340–53–4141, Revision 01, dated July 7, 2003; as applicable. If any crack is detected, before further flight, repair or replace the new reinforced stiffener with a new fitting in a manner approved by either the Manager, International Branch, ANM–116, FAA; or the DGAC (or its delegated agent).

Optional Terminating Action

(d) Replacement of the FR12A stiffeners with new, reinforced stiffeners; installation of new reinforced junction fittings between FR12A/FR13 and FR13/FR13A at the stringer 26 level; and installation of a new shear web that joins the fitting to the cabin floor track; per the Accomplishment Instructions of Airbus Service Bulletin A330–53–3130, Revision 01, dated October 10, 2003; or A340–53–4137, Revision 01, dated October 10, 2003; as applicable; constitutes terminating action for the inspection requirements of paragraphs (a) and (c) of this AD, only for the side on which the replacement and installations are made.

Actions Accomplished Per Previous Issues of Service Bulletins

(e) Actions accomplished before the effective date of this AD per Airbus Service Bulletins A330–53–3130, dated May 26, 2003; A330–53–3135, dated May 26, 2003; A340–53–4137, dated May 26, 2003; or A340–53–4137, dated May 26, 2003; are considered acceptable for compliance only with the following requirements of this AD: The HFEC inspections required by paragraph (a) of this AD, the replacement required by paragraph (b) of this AD, and the actions in paragraph (d) of this AD.

No Reporting Requirements

(f) Although the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; and Airbus Service Bulletin A340–53–4141, Revision 01, dated July 7, 2003; describe procedures for submitting certain information to the manufacturer, this AD does not require those actions.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directives 2003–205(B), dated May 28, 2003; and 2003–206(B), dated May 28, 2003.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7359 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–56–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require inspection of the alternating current (AC) power cables, realignment of the AC power cable retaining clamp, and corrective actions if necessary. These actions are necessary to prevent chafing of the AC power cables against the alternator, which could result in a short circuit and impaired performance of AC-powered components, possibly leading to loss of flight-critical information to the flight deck and reduced controllability of the airplane. These actions are intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–56–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–56–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that chafing of the alternating current (AC) power cables against the alternator has been reported. This condition, if not corrected, could result in a short circuit and impaired performance of AC-powered components, possibly leading to loss of flight-critical information to the flight deck and reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Dornier Service Bulletin SB–328–24–433, dated April 12, 2002, which describes procedures for a visual inspection of AC power cables for damage due to chafing of the cables against the alternator, realignment of the cable retaining clamp, repair of any damaged cables, installation of protective sleeving over the cables, and installation of cable ties. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2003–084, dated March 20, 2003, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed AD, German Airworthiness Directive, and Service Information

Operators should note that Dornier Service Bulletin SB–328–24–433, dated April 12, 2002, recommends doing the actions in the service bulletin ''at the next A-check or equivalent.'' German airworthiness directive 2003–084, dated March 20, 2003, recommends doing the actions ''at the next A–Check at latest.'' Because ''A-check'' schedules vary among operators, this proposed AD would require accomplishment of the actions within 400 flight cycles after the effective date of this proposed AD, and accomplishment of any required

corrective action before further flight. We find that compliance within 400 flight cycles after the effective date of this proposed AD is appropriate for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $122 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,801, or $317 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket 2003–NM–56–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the alternating current (AC) power cables against the alternator, which could result in a short circuit and impaired performance of AC-powered components, possibly leading to loss of flight-critical information to the flight deck and reduced controllability of the airplane, accomplish the following:

Corrective Actions

(a) Within 400 flight hours after the effective date of this AD, perform a general visual inspection of the AC power cables for damage due to chafing of the cables against the alternator, realign the cable retaining clamp, repair any damaged cables, install protective sleeving over the cables, and install cable ties; in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–24–433, dated April 12, 2002.

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

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in German airworthiness directive 2003–084, dated March 20, 2003.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7358 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Series Airplanes; Airbus Model A340–300 Series Airplanes; and Airbus Model A340–541 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 series airplanes; Airbus Model A340–300 series airplanes; and Airbus Model A340–541 airplanes. This proposal would require lubrication of the upper and lower shortening mechanism (SM) link of the main landing gear, and consequent detection of resistance or blockage of the greaseway. Depending upon the resistance finding and upon whether or not the airplane has a certain modification, this proposal would require various other actions including unblocking the greaseway; accomplishing any necessary repairs; performing various inspections; and accomplishing the eventual replacement of the SM8 pin, if necessary. This action is necessary to prevent failure of the landing gear lengthening system, which could result in reduced controllability of the airplane on the ground during landing. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–247–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–247–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 series airplanes; Airbus Model A340–300 series airplanes; and Airbus Model A340–541 airplanes. The DGAC advises that on approach, after landing gear extension, the crew of an Airbus Model A330 series airplane received a warning of ''Landing Gear LH Lengthening Fault,'' and an advisory message to keep the landing gear lever down. An inspection of the landing gear after the airplane landed showed that the left-hand (LH) main landing gear (MLG) was completely compressed. Investigation found that the LH shortening mechanism (SM) proximity sensor was not in the proper position, which was caused by the failure of the connecting link. The link failure was caused by corrosion on the non-nickel underchrome SM8 pin due to poor lubrication. This condition, if not corrected, could result in failure of the landing gear lengthening system, which could cause reduced controllability of the airplane on the ground during landing.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 32A3151, dated March 26, 2002; and AOT 32A4189, dated March 26, 2002. These AOTs describe procedures for lubricating the upper and lower SM links and consequent detection of discrepancies (resistance or blockage) in the greaseway.

For airplanes on which Airbus Modification 46904 has been incorporated, that have a discrepant greaseway, or for airplanes on which Airbus Modification 46904 has not been incorporated (whether or not it has a discrepant greaseway); the AOTs describe procedures for performing a detailed inspection of the SM8 pin for damage or corrosion, unblocking any blocked greaseway, and replacing any damaged or corroded pin with a new part.

For airplanes on which Airbus Modification 46904 has not been incorporated, that have a discrepant greaseway, the AOTs describe additional procedures for performing a general visual inspection of the SM8 end caps to determine the presence and correct installation of certain parts, and to measure the gap of the end caps to the outer flanges of the bushes in the lower SM link; unblocking the blocked greaseway and making any necessary repairs; and repeating the general visual inspection, if necessary, until the affected part is repaired.

The DGAC classified these AOTs as mandatory and issued French airworthiness directive 2002–262(B) R1, dated January 8, 2003; and French airworthiness directive 2002–265(B) R2, dated January 8, 2003; to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between the AOTs and the Proposed AD

Although the AOTs specify to report inspection results to the manufacturer, this AD does not include such a requirement.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

The FAA estimates that 9 Model A330 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed lubrication, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the lubrication proposed by this AD on U.S. operators of these airplanes is estimated to be $585, or $65 per airplane.

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

Currently, there are no affected Model A340 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the proposed lubrication at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the lubrication proposed by this AD for these airplanes to be $65 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–247–AD.

Applicability: Model A330 series airplanes; Model A340–300 series airplanes; and Model A340–541 airplanes; having a date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness (whichever occurs later) of May 24, 2002, or earlier; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the landing gear lengthening system, which could result in reduced controllability of the airplane on the ground during landing, accomplish the following:

All Operators Telex Reference

(a) The term ''all operators telex,'' or ''AOT,'' as used in this AD, means the Short-Term Action section of the following AOTs, as applicable:

(1) For Model A330 series airplanes: Airbus AOT 32A3151, dated March 26, 2002; and

(2) For Model A340 series airplanes, and Model A340–541 airplanes: Airbus AOT 32A4189, dated March 26, 2002.

Lubrication

(b) At the later of the compliance times in paragraphs (b)(1) and (b)(2) of this AD: Lubricate the upper and lower shortening mechanism (SM) link of the main landing gear in accordance with the applicable AOT.

(1) Within 6 months after the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 700 flight hours or 60 days after the effective date of this AD, whichever occurs first.

(c) If, during the lubrication required by paragraph (b) of this AD, there is no noticeable resistance or blockage of the greaseway, do paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If Airbus Modification 46904 has been accomplished, no further action is required by this AD.

(2) If Airbus Modification 46904 has not been accomplished, do the applicable inspection and any necessary corrective action in paragraph (e) of this AD.

(d) If, during the lubrication required by paragraph (b) of this AD, there is noticeable resistance or blockage of the greaseway: Before further flight, do the applicable inspection and any necessary corrective action in paragraphs (e) and (f) of this AD.

Inspections and Corrective Action

(e) For airplanes on which Airbus Modification 46904 has been incorporated that have a discrepant greaseway per paragraph (d) of this AD; and for airplanes on which Airbus Modification 46904 has not been incorporated that do not have a discrepant greaseway: Before further flight following the lubrication required by paragraph (b) of this AD, do a general visual inspection for clearance of the end caps of the SM8 pin, and the presence of the split pin, the nut, the end caps, and the bolts; in accordance with paragraph 4.2.2 of the applicable AOT.

(1) If the combined gap of both end caps to the outer flanges of the bushes in the lower SM is less than 0.75 mm: Before further flight, make any necessary repairs and unblock the any blocked greaseway, in accordance with the applicable AOT.

(2) If the inspection required by paragraph (e) of this AD reveals a migration of the SM8 pin end caps to a gap of 0.75 mm to 3.0 mm: Before further flight, unblock any blocked greaseway, and repeat the inspection required by paragraph (e) of this AD at intervals not to exceed 20 flight cycles until paragraph (e)(3) of this AD is accomplished.

(3) If the inspection required by paragraph (e) of this AD reveals a migration of the SM8 pin end caps to a gap of 3.0 mm or greater: Before further flight, remove the SM8 pin, and perform a general visual inspection of the SM upper link, SM lower link, and SM8 pin for damage or blockage, and make any necessary repairs before further flight in accordance with the applicable AOT.

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

Detailed Inspections and Corrective Actions

(f) If noticeable resistance or blockage of the greaseway is noted during the lubrication required by paragraph (b) of this AD: Within 700 flight hours after the effective date of this AD, do a detailed inspection of the SM8 pin for damage or corrosion; unblock any blocked greaseway; and replace any damaged or corroded pin with a new part; in accordance with the applicable AOT.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

No Reporting Requirements

(g) Although the AOTs referenced in this AD specifies to report inspection results to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in French airworthiness directives 2002–262(B) R1, and 2002–265(B) R2, both dated January 8, 2003.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7357 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires revising the Limitations Section of the airplane flight manual to ensure that the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. This action would add inspections of the function of the pressure relief valves of each spoiler servo control (SSC), and corrective action if necessary. This action also would mandate eventual modification of the SSCs, which would terminate the AFM revision in the existing AD. Uncommanded movement of a spoiler during flight could result in reduced controllability of the airplane, and consequent significant increased fuel consumption during flight, which could necessitate an in-flight turn-back or diversion to an unscheduled airport destination. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–228–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–228–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 7, 2002, the FAA issued AD 2002–16–12, amendment 39–12851 (67 FR 53478, August 16, 2002), applicable to certain Airbus Model A330 and A340 series airplanes, to require revising the Limitations Section of the airplane flight manual to ensure that the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. That action was prompted by several reports of incidents where a spoiler servo control (SSC) was not locked in the retracted position during flight. Such uncommanded movement could result in reduced controllability of the airplane, and consequent significant increased fuel consumption

during flight, which could necessitate an in-flight turn-back or diversion to an unscheduled airport destination.

Actions Since Issuance of Previous Rule

The preamble to AD 2002–16–12 explains that we consider the requirements ''interim action'' and are considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

In addition, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, was notified that the incidents that prompted the existing AD (where a SSC was not locked in the retracted position during flight) were caused by the loosening of an insert screw of the pressure relief valve (PRV) located in the SSC. Further inspections revealed two additional loose insert screws; therefore, the DGAC has mandated an inspection program and terminating modification.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Service bulletin	Revision level	Date	Affected models
A330–27–3090.	02	August 1, 2002.	A330
A330–27–3094.	01	August 1, 2002.	A330
A340–27–4096.	02	August 1, 2002.	A340
A340–27–4100.	01	August 1, 2002.	A340

Service Bulletins A330–27–3090 and A340–27–4096 describe procedures for inspections and checks of the function of the PRV of each SSC, and corrective action if necessary. The actions include checking for correct locking of the SSC and, if any movement is possible, replacing the SSC with a modified or exchange unit, and adjustment of the spoiler. The service bulletins also describe procedures for an operational test and specify reporting inspection results to Airbus. These service bulletins reference Liebherr Service Bulletin 1386A–27–03, Revision 1, dated February 4, 2002, as an additional source of service information for accomplishment of the inspections.

Service Bulletins A330–27–3094 and A340–27–4100 describe procedures for modification of the SSCs. The modification includes checking the identification plates of the SSCs for certain part numbers, and if the identification plates are missing, checking for the location of the SSC to determine if the SSC is affected. If the SSC is affected, the procedures involve removing and inspecting the PRV and installing a new, improved PRV in the SSC. If the PRV screw is detached, or the SSC does not lock in place correctly, the procedures involve replacing the SSC with a modified or exchange unit. The service bulletins also describe procedures for an operational test following the modification, which includes checking for correct locking of the SSCs, replacement of the SSC with a modified or exchange unit if any movement is detected, and a visual inspection for leakage and repair of any leakage found. Accomplishment of the modification eliminates the need for the AFM revision. These service bulletins reference Liebherr Service Bulletin 1386A–27–05, dated February 25, 2002, as an additional source of service information for accomplishment of the modification.

The DGAC classified the Airbus service information as mandatory and issued French airworthiness directives 2002–552(B) and 2002–553(B), both dated November 13, 2002; to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2002–16–12 to continue to require revising the Limitations Section of the airplane flight manual to ensure the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight. The proposed AD also would require inspections and checks of the function of the pressure relief valves of each SSC, and corrective action if necessary. The proposed AD would also mandate eventual modification of the SSCs, which would terminate the AFM revision in the existing AD. The actions would be required to be accomplished in accordance with the Airbus service information described previously, except as discussed below.

Differences Between Airbus Service Bulletins and This Proposed AD

Service Bulletins A330–27–3090 and A340–27–4096 specify submitting the inspection results to the manufacturer, but this proposed AD does not include such a requirement.

Service Bulletins A330–27–3090 and A340–27–4096 refer to an ''inspection'' of the function of the pressure relief valve of the SSC. We have determined that the procedures in the service bulletins refer to a ''detailed inspection.'' Note 2 has been included in this proposed AD to define this type of inspection.

Work Hour Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 14 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 2002–16–12 takes about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $65 per airplane.

The new inspections/checks that are proposed in this AD action would take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these proposed inspections/checks of this AD on U.S. operators is estimated to be $910, or $65 per airplane, per inspection/check cycle.

The new modification that is proposed in this AD action would take about 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided to operators free of charge. Based on these figures, the cost impact of the proposed modification of

this AD on U.S. operators is estimated to be $13,650, or $975 per airplane.

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

Currently, there are no Model A340 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the new inspections/checks proposed in this AD action would take about 1 work hour, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the inspections/checks to be $65 per airplane, per inspection/check cycle. The new modification that is proposed in this AD action would take about 15 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided to operators free of charge. Based on these figures, we estimate the cost of this modification to be $975 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12851 (67 FR 53478, August 16, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–228–AD. Supersedes AD 2002–16–12, Amendment 39–12851.

Applicability: Model A330 and A340 series airplanes, certificated in any category; equipped with any spoiler servo control having part number (P/N) 1386A0000–01 or 1386B0000–01, or P/N 1387A0000–01 or 1387B0000–01.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the proper procedures in the event of uncommanded movement of a spoiler during flight, which could result in reduced controllability of the airplane and consequent significant increased fuel consumption during flight, and could result in an in-flight turn-back or diversion to an unscheduled airport destination, accomplish the following:

Restatement of Requirements of AD 2002–16–12

Revision to Airplane Flight Manual (AFM)

(a) Within 10 days after September 20, 2002 (the effective date of AD 2002–16–12, amendment 39–12851), revise the Limitations Section of the airplane flight manual (AFM) by including the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of the following Figure 1 into the AFM:

BILLING CODE 4910–13–P

Figure 1

"PROCEDURE:

- **If "F/CTL SPLR FAULT" is triggered**
  - F/CTL S/D page.....CHECK

- **If the affected spoiler is not indicated extended amber:**
  The spoiler is faulty in the retracted position. In such a case, the specific OEB procedure does not apply.

  - LDG DIST PROC.....APPLY
  Multiply the landing distance by 1.1 for 3 or 4 spoilers lost per wing.
  Multiply the landing distance by 1.2 for 5 or 6 spoilers lost per wing.

- **If the affected spoiler is indicated extended amber, apply the following procedure:**

  IN CRUISE

  CAUTION

  Disregard FMGC fuel predictions, as they do not take the increase in fuel consumption into account.

  - FUEL CONSUMPTION INCREASE.....APPLY
  Apply 18.5% increase in the fuel consumption.

  - IN-FLIGHT TURN BACK/DIVERSION.....CONSIDER
  In-flight turn back or diversion may have to be considered due to this fuel penalty.

  - MAX ACHIEVABLE ALTITUDE DECREASE.....CONSIDER
  With the maximum spoiler deflection, the maximum altitude in ISA conditions may decrease by 4,500 feet.

  FOR LANDING

  - FOR LDG.....USE FLAP 3
  Use CONF 3 for landing to avoid possible buffeting, which, however, may be high depending on the failed spoiler.

  -VAPP.....NORM

  - LDG DIST.....x 1.1"

BILLING CODE 4910–13–C

Note 1: When the procedure in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, provided the procedures in this AD and the general revisions are identical. This AD may then be removed from the AFM.

New Requirements of This AD

Initial Detailed Inspection/Functional Check

(b) Within 700 flight hours after the effective date of this AD: Do a detailed inspection/functional check of the blocking function of the pressure relief valves (PRVs) of affected spoiler servo controls (SSCs) by doing all the actions per paragraphs 3.A., 3.B.(1)(a), 3.D., and 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A330–27–3090 (for A330 series airplanes) or A340–27–4096 (for A340 series airplanes), both Revision 02, both dated August 1, 2002; as applicable.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Liebherr Service Bulletin 1386A–27–03, Revision 1, dated February 4, 2002, is referenced in Airbus Service Bulletins A330–27–3090 and A340–27–4096 as an additional source of service information for accomplishment of the inspections.

Corrective Action

(c) If any malfunction is found on any affected SSC during the inspection/functional check required by paragraph (b) of this AD, before further flight, do the terminating action required by paragraph (e) of this AD for the affected SSC only. Repeat the inspection/functional check of the functioning SSCs one time within 1,600 flight hours after accomplishment of the initial inspection required by paragraph (b) of this AD. If no malfunction is found, repeat the inspection/functional check thereafter at intervals not to exceed 2,400 flight hours, until accomplishment of the terminating action required by paragraph (e) of this AD for the remaining SSCs.

(d) If no malfunction is found on any affected SSC during the inspection/functional check required by paragraph (b) of this AD, repeat the inspection/functional check one time within 1,600 flight hours after accomplishment of the initial inspection required by paragraph (b) of this AD. If no malfunction is found, repeat the inspection/functional check thereafter at intervals not to exceed 2,400 flight hours, until accomplishment of the terminating action required by paragraph (e) of this AD.

Terminating Action

(e) Except as required by paragraph (c) of this AD: Within 13 months after the effective date of this AD, modify all affected SSCs by doing all the actions per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3094 (for A330 series airplanes) or A340–27–4100 (for A340 series airplanes), both Revision 01, both dated August 1, 2002; as applicable. Modification of all affected SSCs terminates the requirements of paragraphs (a), (b), (c), and (d) of this AD. After the modification has been done, the previously required AFM revision may be removed.

Note 4: Liebherr Service Bulletin 1386A–27–05, dated February 25, 2002, is referenced in Airbus Service Bulletins A330–27–3094 and A340–27–4100 as an additional source of service information for accomplishment of the modification.

Previously Accomplished Actions

(f) Accomplishment of the inspections per Airbus Service Bulletins A330–27–3090 and A340–27–4096, both dated September 28, 2001; or A330–27–3090 and A340–27–4096, both Revision 01, both dated December 12, 2001; as applicable; is considered acceptable for compliance with the inspections required by this AD. Accomplishment of the modification per Airbus Service Bulletins A330–27–3094 and A340–27–4100, both dated May 21, 2002; as applicable; is considered acceptable for compliance with the modification required by this AD.

(g) Airbus Service Bulletins A330–27–3090 and A340–27–4096, both dated August 1, 2002, specify to submit inspection results to the manufacturer, however; this AD does not include such a requirement.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane a spoiler servo control having P/N 1386A0000–01, 1386B0000–01, 1387A0000–01, or 1387B0000–01, unless it has been modified per paragraph (e) of this AD.

Alternative Methods of Compliance

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

Note 5: The subject of this AD is addressed in French airworthiness directives 2002–552(B) and 2002–553(B), both dated November 13, 2002.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7356 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes. This proposal would require revising the Airplane Flight Manual to ensure that the propeller synchronizer switch is ''OFF'' after engine start and before takeoff and landing. This action is necessary to prevent a possible loss of airplane control and subsequent injury to the flight crew and passengers. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–105–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–105–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–120 series airplanes. The DAC advises that the airplane flight manual (AFM) allows takeoff and landings with the propeller synchronizer ''ON,'' which is not an approved configuration. If the propeller synchronizer is either left in the ''ON'' position or switched to the ''ON'' position during takeoffs and landings, the pilot's control of engine power during critical phases of the flight could be impeded. Such an impediment could result in loss of control of the airplane and subsequent injury to the flight crew and passengers.

Explanation of Relevant Service Information

EMBRAER has issued EMB–120 Airplane Flight Manual, 120/794, Revision 64, dated March 12, 2003. Pages 4–17, 4–23, and 4–27 of this revision have been revised to ensure that the propeller synchronizer switch is ''OFF'' after engine start and before takeoff and landing. Accomplishment of the actions specified in the AFM revision is intended to adequately address, in part, the identified unsafe condition. The DAC has issued Brazilian airworthiness directive 2003–02–01, dated March 3, 2003, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the Limitations and Normal Procedures Sections of the AFM to ensure that the propeller synchronizer switch is ''OFF'' after engine start and before takeoff and landing. The revision to the Normal Procedures Section of the AFM would be required to be accomplished in accordance with the pages of the AFM described previously.

Clarification Between Brazilian Airworthiness Directive and This Proposed Rule

The Brazilian airworthiness directive requires revising the Normal Procedures Section of the AFM by specifying which phrases to remove and add. Because AFM 120/794, Revision 64, dated March 12, 2003 (described above), includes the revisions to the Normal Procedures Section of the AFM specified in the Brazilian airworthiness directive, this proposed AD would require inserting those pages into the AFM. It is our intention to provide an exact representation of the desired end result in the AFM to make the revision process easier/less complex and to ensure that all steps related to the propeller synchronizer are corrected.

Cost Impact

The FAA estimates that 217 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,105, or $65 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–105–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible loss of airplane control and subsequent injury to the flight crew and passengers, accomplish the following:

Revision of the Airplane Flight Manual (AFM)

(a) Within 30 days from the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the AFM to include the following text in ''Section II—Limitations'' under title ''Powerplant,'' subtitle ''Propeller'' (this may be accomplished by inserting a copy of this AD into the AFM): ''For takeoff and landing PROP SYNC must be OFF''

Note 1: When a statement identical to that in paragraph (a)(1) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise the Normal Procedures section of the AFM by inserting pages 4–17, 4–23, and 4–27 of EMBRAER AFM 120/794, Revision 64, dated March 12, 2003, into the AFM.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2003–02–01, dated March 3, 2003.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7355 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–294–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that currently requires certain revisions to the airplane flight manual, replacement of certain de-icing boots in the air intake duct assemblies of the engine with re-designed units, repetitive inspections of the boots to find discrepancies, and corrective action if necessary. This action would also require modification of the engine air inlet de-icing system. This action would extend the repetitive inspection interval required by the existing AD, and would add repetitive debonding/delamination and leakage inspections of the de-icing boots, and corrective action if necessary. Initiation of the extended repetitive inspections and new repetitive inspections would end the repetitive inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent engine malfunction due to failure of the engine air inlet de-icing system, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–294–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–294–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 14, 1995, the FAA issued AD 95–04–51, amendment 39–9179 (60 FR 15037, March 22, 1995), applicable to all Dornier Model 328–100 series airplanes, to require certain revisions to the airplane flight manual (AFM), replacement of certain de-icing boots in the air intake duct assemblies of the engine with re-designed units, and inspections of the boots to find discrepancies. That action was prompted by reports of failures of the engine air inlet de-icing system, including debonding of the boots from the engine air intake ducts, failure of the air-tight chambers in the boots, and malfunction and subsequent shutdown of an engine during flight. The requirements of that AD are intended to prevent engine malfunction due to failure of the engine air inlet de-icing system.

Actions Since Issuance of Previous Rule

In the preamble to AD 95–04–51, we specified that the actions required by that AD were considered to be ''interim action'' and that we may consider further rulemaking action. The manufacturer now has developed an improved modification of the engine air inlet de-icing system. We have determined that further rulemaking is necessary to require the modification on affected airplanes; this proposed AD follows from that determination.

Explanation of New Service Information

The manufacturer has issued the following Dornier Service Bulletins:

- SB–328–71–122, Revision 1, dated May 10, 1999, which describes procedures for the modification of the engine air intake ducts. The service bulletin references Westland Aerospace Limited Service Bulletin SB–WAL328–71–122, dated September 25, 1995, as an additional source of service information for accomplishment of the modification.
- SB–328–71–125, Revision 3, dated May 10, 1999, which describes procedures for modification of the engine air inlet de-icing system, which includes installation of new, improved engine air intake ducts, installation of geometrically adapted de-icing boots, and installation of an improved outlet cover plate of the bypass duct. The service bulletin also describes procedures for doing detailed visual and tactile inspections of certain de-icing boots for discrepancies (flat spots, softness, or other irregularities in concave sections, or improper sealing), and corrective action if discrepancies are found. The corrective action includes doing a debonding inspection, as specified in the airplane maintenance manual, and if the debonded area is outside the allowable limits, replacing all three de-icing boots before further flight.

Dornier Service Bulletin SB–328–71–125, Revision 3, also references Westland Aerospace Limited Service Bulletin SB–WAL328–71–125, Revision 1, dated September 25, 1995, as an additional source of service information for installation of the cover plate of the bypass duct outlet.

- SB–328–30–432, dated April 26, 2002, which describes procedures for doing detailed visual and tactile inspections of the engine air inlet de-icing boots to find discrepancies (flat or soft spots in concave sections, defects on the de-icing boots, or improper sealing), and corrective action if discrepancies are found. The corrective action includes doing a debonding/delamination and leakage inspection, and replacing any delaminated de-icing boot outside the allowable bonding limits. The inspections are to be repeated thereafter at certain intervals.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified the Dornier service information as mandatory and issued German airworthiness directives 1995–156/3, dated July 1, 1999; and 2002–256, dated September 5, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–04–51 to continue to require the revisions to the AFM, replacement of certain de-icing boots in the air intake duct assemblies of the engine with re-designed units, and repetitive inspections of the boots to find discrepancies, and corrective action if necessary. This action also would require modification of the engine air inlet de-icing system and would add a new AFM revision which changes the compliance time for the functional test required by the existing AD. It would also extend the repetitive inspection interval required by the existing AD, and would add repetitive debonding/delamination and leakage inspections of the de-icing boots, and corrective action if necessary. Initiation of the extended repetitive inspections and debonding/delamination and leakage inspections would end the repetitive inspections required by the existing AD. The actions would be required to be accomplished in accordance with the Dornier service bulletins described previously, except as discussed below.

Differences Among German Airworthiness Directives, Dornier Service Bulletins, and Proposed AD

The German airworthiness directives do not contain a requirement for continued accomplishment of the functional test required by the existing AD, but this proposed AD does continue to require accomplishment of the functional test.

German airworthiness directive 2002–256 and Service Bulletin SB–328–30–432 specify a repetitive interval of 800 flight hours for the detailed inspection and a debonding/delamination and leakage inspection of the engine air intake de-icing system specified in paragraph 2.B.2. of the service bulletin. We have determined that, since paragraph 2.B.1.(1) of the service bulletin specifies the same detailed inspection at a 60-flight-hour interval, it is not necessary to also require the detailed inspection at the 800-flight-hour interval.

In addition, this proposed AD would require accomplishment of the debonding/delamination and leakage inspection described in paragraph 2.B.2.(2) of the service bulletin at intervals not to exceed 400 flight hours,

in lieu of every 800 flight hours. We have reviewed the service history of the U.S.-registered fleet of Model 328–100 series airplanes and have found that an 800-flight-hour debonding/delamination and leakage inspection interval would not be sufficient to find progressive inlet boot delamination/debonding before it reaches a point where it represents a hazard to the airplane. In developing an appropriate compliance time for this action, we considered not only the safety implications and the LBA recommendations, but the manufacturer's recommendation and the degree of urgency associated with addressing the subject unsafe condition. In light of all of these factors, we find an initial compliance time of ''within 400 flight hours after the effective date of this AD,'' and repetitive intervals not to exceed 400 flight hours after the initial inspection, for doing the proposed debonding/delamination and leakage inspections to be warranted, in that those times represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Although Service Bulletin SB–328–30–432 defines the inspection as ''visual'' and ''touch,'' and SB–328–71–125 defines the inspection as ''detailed visual'' and ''tactile,'' this proposed AD defines that inspection as a ''detailed'' inspection. In addition, we have changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this proposed AD. A new note has been added to the proposed AD to define this inspection.

German airworthiness directive 1995–156/3 and Service Bulletin SB–328–71–125 recommend modification of the air intake/de-icing system ''not later than December 31, 1995,'' and ''weekly'' visual and tactile inspections. This proposed AD would require the modification within 60 flight hours after the effective date of this AD. When German airworthiness directive 1995–156/2 was issued on November 2, 1995, we did not take parallel action because we had previously issued an alternative method of compliance for the existing AD which approved the modification of the air intake/de-icing system. We are now requiring the modification on all airplanes that have not yet been modified.

In addition, although ''weekly'' visual and tactile inspections are specified in the German airworthiness directive and Service Bulletin SB–328–71–125, this proposed AD would require only a one-time inspection after accomplishment of the modification, then repetitive detailed inspections at intervals not to exceed 60 flight hours and debonding/delamination and leakage inspections at intervals not to exceed 400 flight hours, per the procedures specified in Service Bulletin SB–328–30–432.

Service Bulletin SB–328–30–432 describes procedures for completing a reporting sheet with inspection results, but this proposed AD does not include such a requirement.

Work Hour Rate Increase

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are about 53 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision currently required by AD 95–04–51 takes about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required AFM revision is estimated to be $65 per airplane.

The inspections currently required by AD 95–04–51 take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspections are estimated to be $65 per airplane, per inspection cycle.

The replacement currently required by AD 95–04–51 takes about 5 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost about $55,000 per airplane. Based on these figures, the cost impact of the currently required replacement is estimated to be $55,325 per airplane.

The modification proposed in this AD action would take about 10 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $34,450, or $650 per airplane.

The inspection/debonding/delamination and leakage inspection proposed in this AD action would take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $3,445, or $65 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9179 (60 FR 15037, March 22, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–294-AD. Supersedes AD 95–04–51, Amendment 39–9179.

Applicability: All Model 328–100 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine malfunction due to failure of the engine air inlet de-icing system, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 95–04–01

AFM Revision

(a) For all airplanes: Within 24 hours after April 6, 1995 (the effective date of AD 95–04–51, amendment 39–9179), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the following limitation in the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''During flight, if the 'ENG DEICE FAIL' electronic indication and caution advisory system (EICAS) annunciation activates for either engine, flight into known or forecast icing conditions is prohibited.''

(2) Revise the Abnormal Procedures Section of the FAA-approved AFM by removing page 4, dated September 1, 1994, of section 04–12–00, and replacing it with the following. This may be accomplished by inserting a copy of this AD in the AFM.

''1. Icing Conditions ..	Exit immediately. If unable, land at nearest suitable airport.''

(3) Revise the Limitations Section of the FAA-approved AFM to include the following functional test. This may be accomplished by inserting a copy of this AD in the AFM. Continue to do the functional test until the AFM revision required by paragraph (e) of this AD is done.

''Accomplish the following test at the applicable time specified as follows:

For airplanes equipped with air intake duct assemblies having de-icing boots with part numbers (P/N's) 29S–5D5240–21, –23, and –25: As of 24 hours after the effective date of AD 95–04–51, accomplish the functional test prior to each flight.

For airplanes equipped with air intake duct assemblies having de-icing boots with P/N's 29S–5D5240–211 (inlet lip), –231 (bypass duct), and –251 (aft ramp duct): Accomplish the functional test within 24 hours after the effective date of AD 95–04–51, and thereafter at daily intervals.

Perform a functional test of the de-icing system of the air intake ducts of the left and right engines to determine the condition of the system, in accordance with the procedures specified below. Flight crew or maintenance personnel shall perform this test.

FUNCTIONAL TEST OF THE DE-ICING SYSTEM

With engines running at idle power, display and monitor the 'ICE PROTECT' system page of the electronic indication and caution advisory system (EICAS), select left and right 'ENGINE INTAKE' pushbuttons in ('ON'), for a minimum of 60 seconds. Monitor system page for normal indications of one complete boot inflation and deflation cycle. Monitor EICAS for normal messages, and absence of 'ENG DEICE FAIL' caution.

After 60 seconds and observation of one complete inflation/deflation cycle, release 'ENGINE INTAKE' pushbuttons to out ('OFF') position, confirm absence of system page and EICAS cautions, and deselect 'ICE PROTECT' system page. At completion of check, 'ENGINE INTAKE' pushbuttons may be turned back on if required for departure.

If any EICAS 'ENG DEICE FAIL' annunciation is observed, or if system normal inflate and deflate cycling is not observed: The system shall be considered inoperative. Prior to further flight, the detailed visual and tactile inspections required by paragraph (b) of AD 95–04–51 must be accomplished.

If no discrepancy with the de-icing boots is found during these inspections, the de-icing system may be inoperative for a period of time not to exceed that specified in the DO–328 Master Minimum Equipment List (MMEL). Flight into known or forecast icing conditions is prohibited.''

Repetitive Inspections/Corrective Action

(b) For airplanes equipped with air intake duct assemblies having de-icing boots with part numbers (P/N) 29S–5D5240–21, –23, and –25: Accomplish paragraphs (b)(1) and (b)(2) of this AD at the times specified in those paragraphs.

(1) Within 24 hours after April 6, 1995: Perform a detailed inspection and a tactile inspection of the de-icing boots in the air intake ducts on the engines to find flat spots, softness, or other discrepancies, and to ensure that the edges of the de-icing boots are sealed properly, in accordance with Dornier Service Bulletin SB–328–30–020, dated March 17, 1994.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(i) If no discrepancies are found and the edges of the de-icing boots are sealed properly (no debonding between the boot and the intake duct), repeat the detailed and tactile inspections required by paragraph (b)(1) of this AD thereafter at daily intervals until accomplishment of the modification required by paragraph (f) of this AD.

(ii) If any discrepancy is found, or if any edge of a de-icing boot is sealed improperly (debonding between the boots and the intake duct), prior to further flight, replace all three de-icing boots having P/Ns 29S–5D5240–21, –23, and –25, with three new units having P/Ns 29S–5D5240–211, –231, and –251, in accordance with the procedures specified in Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995.

(2) Within 5 days after April 6, 1995, replace all three de-icing boots having P/N's 29S–5D5240–21, –23, and –25, with three new units having P/Ns 29S–5D5240–211, –231, and –251, in accordance with Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995. Following such replacement, perform the detailed and tactile inspections and the functional tests required by paragraphs (c) and (e) of this AD, respectively, in accordance with the times and procedures specified in those paragraphs.

(c) For airplanes equipped with air intake duct assemblies having de-icing boots with P/Ns 29S–5D5240–211,–231, and –251: Within 7 days after April 6, 1995, perform a detailed inspection and a tactile inspection of the de-icing boots in the air intake ducts on the engines to find flat spots, softness, or other discrepancies, and to ensure that the edges of the de-icing boots are sealed properly, in accordance with the procedures specified in Dornier Service Bulletin SB–328–30–020, dated March 17, 1994.

(1) If no discrepancies are found and the edges of the de-icing boots are sealed properly (no debonding between the boot and the intake duct): Repeat the detailed and tactile inspections required by paragraph (c) of this AD thereafter at intervals not to exceed 7 days until accomplishment of the modification required by paragraph (f) of this AD.

(2) If any discrepancy is found, or if any edge of a de-icing boot is sealed improperly (debonding between the boots and the intake duct): Prior to further flight, replace all three de-icing boots with three new units having P/Ns 29S–5D5240–211, –231, and –251, in accordance with Dornier Alert Service Bulletin ASB–328–71–006, Revision 1, dated February 16, 1995.

Parts Installation

(d) As of April 6, 1995, no de-icing boot having P/N 29S–5D5240–21, –23, or –25 shall be installed on any airplane.

New Requirements of This Ad

AFM Revision

(e) Within 24 hours after the effective date of this AD: Revise the Limitations Section of the AFM to include the following functional test. This may be accomplished by inserting a copy of this AD into the AFM. Accomplishment of this paragraph ends the requirements of paragraph (a)(3) of this AD, and the AFM revision required by that paragraph may be removed from the AFM.

''Accomplish the following test within 24 hours after the effective date of this AD. Repeat the test thereafter at daily intervals.

Perform a functional test of the de-icing system of the air intake ducts of the left and right engines to determine the condition of the system, in accordance with the procedures specified below. Flight crew or

maintenance personnel shall perform this test.

FUNCTIONAL TEST OF THE DE-ICING SYSTEM

With engines running at idle power, display and monitor the 'ICE PROTECT' system page of the electronic indication and caution advisory system (EICAS), select left and right 'ENGINE INTAKE' pushbuttons in ('ON'), for a minimum of 60 seconds. Monitor system page for normal indications of one complete boot inflation and deflation cycle. Monitor EICAS for normal messages, and absence of 'ENG DEICE FAIL' caution.

After 60 seconds and observation of one complete inflation/deflation cycle, release 'ENGINE INTAKE' pushbuttons to out ('OFF') position, confirm absence of system page and EICAS cautions, and deselect 'ICE PROTECT' system page. At completion of check, 'ENGINE INTAKE' pushbuttons may be turned back on if required for departure.

If any EICAS 'ENG DEICE FAIL' annunciation is observed, or if system normal inflate and deflate cycling is not observed: The system shall be considered inoperative. Prior to further flight, the detailed inspections required by paragraph (g) of this AD must be accomplished.

If no discrepancy with the de-icing boots is found during these inspections, the de-icing system may be inoperative for a period of time not to exceed that specified in the DO–328 Master Minimum Equipment List (MMEL). Flight into known or forecast icing conditions is prohibited.''

Modification of the Engine Air Intake De-icing System

(f) Within 60 flight hours after the effective date of this AD: Modify the engine air inlet de-icing system (including a one-time detailed inspection and a debonding/delamination and leakage inspection) by doing all the actions (including any applicable corrective action) per the Accomplishment Instructions of Dornier Service Bulletin SB–328–71–125, Revision 3; and by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–71–122, Revision 1; both dated May 10, 1999. Do any applicable corrective action before further flight per the applicable service bulletin.

Note 2: The de-icing boots approved for installation on the modified engine inlet assembly are specified in paragraph 3., ''Material Information,'' of the Accomplishment Instructions of Dornier Service Bulletin SB–328–30–432, dated April 26, 2002.

Note 3: Dornier Service Bulletin SB–328–71–122, Revision 1, dated May 10, 1999, references Westland Aerospace Limited Service Bulletin SB–WAL328–71–122, dated September 25, 1995, as an additional source of service information for modification of the air intake ducts; and Dornier Service Bulletin SB–328–71–125, Revision 3, dated May 10, 1999, references SB–WAL328–71–125, Revision 1, dated September 25, 1995, as an additional source of service information for installation of the cover plate of the bypass duct outlet.

Repetitive Inspections

(g) Within 60 flight hours after accomplishment of paragraph (f) of this AD: Do a detailed inspection of the engine air inlet de-icing boots to find discrepancies (including flat or soft spots in concave sections, defects on the de-icing boots, or improper sealing), per paragraph 2.B.1. of the Accomplishment Instructions of Dornier Service Bulletin SB–328–30–432, dated April 26, 2002. Do any applicable corrective action before further flight per the service bulletin. Repeat the inspection thereafter at intervals not to exceed 60 flight hours.

(h) Within 400 flight hours after accomplishment of paragraph (f) of this AD: Do a debonding/delamination and leakage inspection of the engine air inlet de-icing boots by doing all the applicable actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–30–432, dated April 26, 2002. Do any applicable corrective action before further flight per the service bulletin. Repeat the inspection thereafter at intervals not to exceed 400 flight hours.

(i) Initiation of the repetitive inspections required by paragraphs (g) and (h) of this AD terminates the repetitive inspections required by paragraphs (b) and (c) of this AD.

No Reporting Required

(j) Where Dornier Service Bulletin SB–328–30–432, dated April 26, 2002; describes procedures for completing a reporting sheet with inspection results, this AD does not require that action.

Alternative Methods of Compliance

(k)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 95–04–51, amendment 39–9179, are not considered to be approved as alternative methods of compliance with this AD.

Note 4: The subject of this AD is addressed in German airworthiness directives 1995–156/3, dated July 1, 1999; and 2002–256, dated September 5, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7303 Filed 3–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require modification of the hot detection system of the tail pipe harness of the engine nacelles. This action is necessary to prevent false warning indications to the flight crew from the hot detection system due to discrepancies of the harness, which could result in unnecessary aborted takeoffs on the ground or an in-flight engine shut down. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–114–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–114–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that operators have reported false warning indications to the flight crew from the hot detection system of the tail pipe harness of the engine nacelles. The cause of the false warnings has been attributed to moisture ingress, corroded connectors, and chafed and broken wires of the hot detection harness of the tail pipe. Such false warnings have resulted in unnecessary aborted takeoffs on the ground and in-flight engine shut downs.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–26–030, dated October 28, 2002, which describes procedures for modification of the hot detection harness, which include the following:

- A one-time inspection of the heat shrink sleeve, sealant, and connectors of the hot detection harness of the tail pipe for damage and/or corrosion, and repair if necessary.
- Installation of a new hot detection harness.
- Installation of new terminal lugs and shrinkable tube.
- Installation of sealant around the terminal lugs on the fire detectors.

The service bulletin also describes procedures for an operational test of the fire detection system of the engine nacelles following accomplishment of the above actions.

In addition, Service Bulletin 340–26–030 specifies that incorporation of the modifications specified in Saab Service Bulletins 340–26–018, Revision 02, and 340–26–029, both dated October 28, 2002; meets the modification specified in the referenced service bulletin. These service bulletins describe modifications similar to the modification specified in the referenced service bulletin.

Accomplishment of the actions specified in Service Bulletin 340–26–030 is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–184, dated October 28, 2002, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Service Bulletin 340–26–030, except as discussed below.

Difference Between Service Bulletin and This Proposed AD

The referenced service bulletin refers only to an ''inspection'' for damage and/or corrosion of the heat shrink sleeve, sealant, and connectors of the hot detection harness of the tail pipe. We have determined that the procedures in the referenced service bulletin should be described as a ''general visual inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Cost Impact

The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 10 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $182,000, or $650 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 2003–NM–114–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159 inclusive, and SAAB 340B series airplanes, serial numbers –160 through –459 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent false warning indications to the flight crew from the hot detection system of the tail pipe harness of the engine nacelles due to discrepancies of the harness, which could result in unnecessary aborted takeoffs on the ground or an in-flight engine shut down, accomplish the following:

Modification

(a) Within one year after the effective date of this AD: Modify the hot detection system of the tail pipe harness of the engine nacelles (including a general visual inspection of the heat shrink sleeve, sealant, and connectors for damage and/or corrosion, and any applicable repair), by doing all the actions per Parts 2.A. through 2.I. inclusive of the Accomplishment Instructions of Saab Service Bulletin 340–26–030, dated October 28, 2002. Any applicable repair must be done before further flight.

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

(b) Accomplishment of the modifications specified in Saab Service Bulletins 340–26–018, Revision 02, and 340–26–029, both dated October 28, 2002; before the effective date of this AD, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Swedish airworthiness directive 1–184, dated October 28, 2002.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7302 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes. This proposal would require repetitive detailed inspections to detect cracks in the keel beam side panels, and repair if necessary. Accomplishment of the repair ends the repetitive inspections for that repaired area. This action is necessary to detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–187–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Ronda Point Maurice Ballonet, 31707 Blanca Codex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–187–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The DGAC, which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A320 series airplanes. The DGAC advises that, during certification structural fatigue tests, cracks were found on the side panels of the keel beams. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1060, dated June 19, 2002, which describes procedures for repetitive detailed inspections to detect cracks in the keel beam side panels, and repair if necessary. Accomplishment of the repair ends the repetitive inspections for that repaired area. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2003–146(B), dated April 16, 2003 (a correction was issued May 14, 2003), in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished per a method approved by either the FAA, or the Direction Generale De L'Aviation Civile (DGAC), France (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

Operators should also note that, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight if cracks are detected in the keel beam side panel. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject keel beam side panel that is found to be cracked must be repaired or modified before further flight.

Cost Impact

The FAA estimates that 400 Model A319 and A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $338,000, or $845 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–187–AD.

Applicability: Model A319 and A320 series airplanes, certificated in any category; except those airplanes on which Airbus Modification 30355 has been incorporated in production.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity of the airplane, accomplish the following:

Service Bulletin

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Airbus Service Bulletin A320–53–1060, dated June 19, 2002.

Initial Inspection

(b) Perform a detailed inspection to detect cracks in the keel beam side panels, in accordance with the service bulletin, at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as a mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For airplanes that have not been inspected per Maintenance Review Board (MRB) task 53–31–42: Inspect at the later of the times specified in paragraph (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Prior to the accumulation of 24,200 total flight cycles, or 48,400 total flight hours, whichever occurs first.

(ii) Within 3,500 flight cycles after the effective date of this AD.

(2) For airplanes that have been inspected per MRB task 53–31–42: Inspect at the later of the times specified in paragraph (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Within 4,300 flight cycles or 9,600 flight hours after the last inspection per MRB task 53–31–42, whichever occurs first.

(ii) Within 3,500 flight cycles after the effective date of this AD.

Repetitive Inspections

(c) Repeat the detailed inspection required by paragraph (b) of this AD at intervals not to exceed 4,300 flight cycles or 9,600 flight hours, whichever occurs first.

Corrective Actions

(d) If any crack is found in ''Area A'' during any inspection required by this AD, before further flight, repair the affected area in accordance with the service bulletin. Once a repair has been accomplished to ''Area A,'' the repetitive inspections of ''Area A'' required by paragraphs (b) and (c) of this AD are no longer required for that side of the keel beam.

(e) If any crack is found in ''Area B'' during any inspection required by this AD, before further flight, repair the affected structure per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale De L'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–146(B), dated April 16, 2003 (a correction was issued May 14, 2003).

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7296 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This proposal would require an inspection of certain ballscrews of the trailing edge flap system to find their part numbers, and replacement of the ballscrews with new, serviceable, or modified ballscrews if necessary. This action is necessary to prevent a flap skew due to insufficient secondary load path of the ballscrew of the trailing edge flaps in the event that the primary load path fails, which could result in possible loss of a flap and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–166–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–166–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from Boeing that certain ballscrews at positions 1 and 8 of the trailing edge flaps do not have a sufficient secondary load path on certain Boeing Model 757–200, –200PF, and –200CB series airplanes. Without a sufficient secondary load path, the ballnut can slip along the ballscrew if the primary load path fails. This condition, if not corrected, could result in a flap skew in the event of failure of the primary load path, which could result in possible loss of a flap and reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–27A0139, dated June 16, 2003, which describes procedures for an inspection of certain ballscrews of the trailing edge flap system to find their part numbers, and replacement of the ballscrews with new, serviceable, or modified ballscrews if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 979 airplanes of the affected design in the worldwide fleet. The FAA estimates that 644 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $41,860, or $65 per airplane.

Replacement of a ballscrew with a new or serviceable ballscrew, if required, would take about 3 work hours per ballscrew, at an average labor rate of $65 per work hour. Required parts would cost about $8,400 per ballscrew. Based on these figures, we estimate the cost of a repair to be $8,595 per ballscrew (there are two ballscrews per airplane).

Removal, modification, and reinstallation of a ballscrew, if required, would take about 6 work hours per ballscrew, at an average labor rate of $65 per work hour. Required parts would cost about $553 per ballscrew. Based on these figures, we estimate the cost of a repair to be $943 per ballscrew (there are two ballscrews per airplane).

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–166–AD.

Applicability: Model 757–200, –200PF, and –200CB series airplanes, line numbers 1 through 979 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a flap skew due to insufficient secondary load path of the ballscrew of the trailing edge flaps in the event that the primary load path fails, which could result in possible loss of a flap and reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Action

(a) Within 36 months after the effective date of this AD, do an inspection of the ballscrews of the trailing edge flap system to find their part numbers (P/N) per the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0139, dated June

16, 2003. If the P/N of the ballscrew is S251N401–5 (Thomson Saginaw P/N 7820921) or S251N401–9 (Thomson Saginaw P/N 7821341), within 36 months after the effective date of this AD, replace the ballscrew with a new, serviceable, or modified ballscrew per the service bulletin.

Parts Installation

(b) As of the effective date of this AD, no person may install a trailing edge flap ballscrew, P/N S251N401–5 or –9, on any airplane.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7295 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–75–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires, among other actions, replacement of the existing air driven generator (ADG) wire assembly in the right air conditioning compartment with a certain new wire assembly. This action would require replacement of the ADG wiring and two associated clamps; inspection of the ADG wiring for correct wire identification, riding, and damage, and inspection of the associated routing/clamps for correct installation; and corrective actions if necessary. The actions specified by the proposed AD are intended to prevent loss of the charging capability of the airplane battery due to chafing. Loss of the charging capability of the airplane battery, coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–75–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–75–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003-NM–75-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 14, 2001, the FAA issued AD 2001–17–12, amendment 39–12403 (66 FR 44034, August 22, 2001), applicable to certain McDonnell Douglas Model MD–11 airplanes, to require, among other actions, replacement of the existing air driven generator (ADG) wire assembly in the right air conditioning compartment with a certain new wire assembly. That action was prompted by an investigation that revealed the length of the new wire assembly is too long and causes the assembly to chafe against the left emergency alternating current bus of the ADG. The requirements of that AD are intended to prevent loss of the charging capability of the airplane battery due to chafing. Loss of the charging capability of the airplane battery, coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects

of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–17–12, the airplane manufacturer has informed the FAA that, although previous revisions of Boeing Service Bulletin MD11–24–128 had the proper wire identification on the wire kits, Revision 03 of the service bulletin, as cited in AD 2001–17–12, had the wrong wire identification numbers. In addition, Revision 03 of the service bulletin did not provide procedures for verifying wire lengths to prevent any riding condition on the structure. Therefore, we have determined that the requirements of that AD do not adequately address the identified unsafe condition (*i.e.*, loss of the charging capability of the airplane battery due to chafing).

Explanation of Relevant Service Information

We have reviewed and approved Revision 05 of Boeing Service Bulletin MD11–24–128, dated June 3, 2003. More work is necessary for airplanes changed as shown in previous revisions of this service bulletin. Revision 05 corrects wire identification numbers and wire data illustrations and adds procedures for verifying wire lengths. It describes the following procedures:

- Replacing the ADG wiring assembly located on the transformer panel at station Y=568.333 in the right air conditioning compartment with a new wire assembly; and replacing the associated clamps and screws of the ADG wire assembly with new clamps and screws;
- Torquing the terminal hardware to specified limits;
- Performing a general visual inspection of the ADG wire installation for damage/riding and correct clamping/routing;
- Performing a general visual inspection of the ADG wiring assembly for correct wire identification and/or damage; and
- Performing corrective actions if necessary.

The corrective actions include identifying wires; repairing or replacing wiring with new wiring; correcting wire clamping and routing; and repairing or replacing the wire assembly with a new assembly; as applicable.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–17–12 to require accomplishment of the actions specified in Revision 05 of the service bulletin described previously.

Explanation of Change to Applicability

McDonnell Douglas Model MD–11F series airplanes were not specifically identified in the applicability of AD 2001–17–12 and are also not identified in the effectivity listing of Revision 05 of the service bulletin. However, those airplanes were identified by manufacturer's fuselage numbers (MFN) in Boeing Service Bulletin MD11–24–128, Revision 03, dated May 21, 2001 (which was referenced in the applicability statement of the AD for determining the specific affected airplanes), and are identified by MFNs in the effectivity listing of Revision 05 of the service bulletin. Therefore, we have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models (*i.e.,* Model MD–11 and –11F airplanes).

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. The FAA estimates that 81 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact for airplanes affected by this proposed AD. The average labor rate is $65 per work hour.

TABLE—COST ESTIMATE

For airplanes identified in the service bulletin as—	Work hours	Parts cost	Per airplane cost
Group 1	2	1,085	$1,215
Group 2	1	(1)	65
Group 3	1	(1)	65

[1] None.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12403 (66 FR 44034, August 22, 2001), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–75–AD. Supersedes AD 2001–17–12, Amendment 39–12403.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the battery charging capability of the air driven generator (ADG), that when coupled with a loss of all normal electrical power, could prevent continued safe flight and landing of the airplane, accomplish the following:

Replacement, Tighten, Inspections, and Identification; As Applicable

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of Table 1 of this AD, as applicable, per the Accomplishment Instructions of Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003.

TABLE 1.—REPLACEMENT, TIGHTEN, INSPECTIONS, AND IDENTIFICATION; AS APPLICABLE

For airplanes identified in the service bulletin as—	Action(s)—
(1) Group 1	(i) Replace the ADG wiring assembly located on the transformer panel at station Y=568.333 in the right air conditioning compartment with a new wire assembly.

TABLE 1.—REPLACEMENT, TIGHTEN, INSPECTIONS, AND IDENTIFICATION; AS APPLICABLE—Continued

For airplanes identified in the service bulletin as—	Action(s)—
	(ii) Replace the associated clamps and screws of the ADG wire assembly with new clamps and screws.
	(iii) Torque the terminal hardware to the limits specified in the service bulletin.
(2) Group 2	Do a general visual inspection of the ADG wire installation for damage/riding and correct clamping/routing.
(3) Group 3	Do a general visual inspection of the ADG wiring assembly for correct wire identification and/or damage.

Corrective Actions

(b) If any discrepancy is found during the general visual inspection required by either paragraph (a)(2) or (a)(3) of this AD, before further flight, accomplish applicable corrective actions per the Accomplishment Instructions of Boeing Service Bulletin MD11–24–128, Revision 05, dated June 3, 2003.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7294 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–277–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. This proposal would require inspecting the ram air turbine actuator (RAT) to determine its serial number; and re-identifying the RAT actuator, inspecting the RAT actuator to determine whether the rotary solenoids are in the correct position, and replacing the RAT actuator, as applicable. This action is necessary to prevent failure of the RAT actuator to deploy when necessary during flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–277–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date

for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–277–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–277–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330, A340–200, and A340–300 series airplanes. The DGAC advises that, during ground tests on a Model A330 series airplane, the ram air turbine (RAT) actuator failed to deploy when commanded. Investigation revealed that the failure was caused by incorrectly adjusted rotary solenoids in the RAT actuator. This condition, if not corrected, could result in failure of the RAT actuator to deploy when necessary during flight, which could result in reduced controllability of the airplane.

The same RAT actuator part numbers that are installed on Model A330 series airplanes are also installed on Model A340–200 and –300 series airplanes. Therefore, those airplanes may be subject to the same unsafe condition revealed on the Model A330 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–29–3083, dated August 6, 2002; and A340–29–4064, Revision 01, dated August 8, 2002. Those service bulletins describe procedures for inspecting the RAT actuator to determine its serial number, and re-identifying RAT actuators that are not affected (*i.e.*, subject to additional inspection) with a new part number. For a RAT actuator with an affected serial number, the service bulletins describe procedures for performing a detailed inspection of the RAT actuator to determine whether the rotary solenoids are in the correct position; and replacing the RAT actuator with a new or serviceable actuator (including adjusting and testing the replaced RAT), or re-identifying the RAT actuator with a new part number, as applicable. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2002–422(B) R1 and 2002–423(B) R1, both dated January 22, 2003, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to Hamilton Sundstrand Service Bulletin ERPS06M–29–16, dated July 18, 2002; and Liebherr-Aerospace Service Bulletin 1560A–29–03, dated July 8, 2002; as additional sources of service information for identifying and inspecting subject RAT actuators, determining whether inspection findings are within acceptable limits, and re-identifying actuators if necessary.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between This Proposed AD and Service Bulletins

Although the Liebherr-Aerospace service bulletin described previously specifies completing and returning a sheet recording compliance with that service bulletin, this proposed AD would not require this action.

Although the Airbus and Liebherr-Aerospace service bulletins described previously specify returning removed actuators to Liebherr-Aerospace for inspection, this proposed AD would not require this action.

Cost Impact

The FAA estimates that 9 Model A330 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $260 per airplane.

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

Currently, there are no affected Model A340–200 or –300 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it will be subject to the same costs stated above for the Model A330 series airplanes.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–277–AD.

Applicability: Model A330, A340–200, and 340–300 series airplanes; certificated in any category; equipped with a ram air turbine (RAT) module, Model ERPS06M, having part number (P/N) 766351, 768084, 770379, 770952, or 770952A; and containing RAT actuator P/N 5911905, 5911326, or 5913234.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the RAT actuator to deploy when necessary during flight, which could result in reduced controllability of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins listed in paragraphs (a)(1) and (a)(2) of this AD. Although these service bulletins specify returning removed actuators to Liebherr-Aerospace for inspection, this AD does not require this action.

(1) For Model A330 series airplanes: Airbus Service Bulletin A330–29–3083, dated August 6, 2002.

(2) For Model A340–200 and –300 series airplanes: Airbus Service Bulletin A340–29–4064, Revision 01, dated August 8, 2002.

Note 1: The service bulletins refer to Hamilton Sundstrand Service Bulletin ERPS06M–29–16, dated July 18, 2002; and Liebherr-Aerospace Service Bulletin 1560A–29–03, dated July 8, 2002; as additional sources of service information for identifying and inspecting subject RAT actuators, determining whether inspection findings are within acceptable limits, and re-identifying actuators if necessary. Although the Liebherr-Aerospace service bulletin specifies completing and returning a sheet recording compliance with that service bulletin and returning removed actuators for inspection, this AD does not require these actions.

Serial Number Inspection

(b) Within 24 months after the effective date of this AD, inspect the RAT actuator to determine its serial number (S/N), per the applicable service bulletin. If the RAT actuator has a S/N greater than 1286, re-identify the RAT actuator, per the applicable service bulletin. No further action is required by this paragraph.

Inspection to Determine Position of Rotary Solenoids

(c) If the RAT actuator has a S/N less than or equal to 1286: Within 24 months after the effective date of this AD, perform a one-time detailed inspection of the RAT actuator to determine whether the rotary solenoids are in the correct position, per the applicable service bulletin.

(1) If the position of the rotary solenoids is within the limits specified in the applicable service bulletin: Before further flight, re-identify the RAT actuator, per the applicable service bulletin.

(2) If the position of the rotary solenoids is outside the limits specified in the applicable service bulletin: Before further flight, replace the RAT actuator with a new or serviceable actuator, per the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Parts Installation

(d) As of the effective date of this AD, no person may install, on any airplane, a RAT actuator having P/N 5911905, 5911326, or 5913234, unless the actions required by this AD are accomplished.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in French airworthiness directives 2002–422(B) R1 and 2002–423(B) R1, both dated January 22, 2003.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7293 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes. This proposal would require inspecting the pressure-off brakes (POBs) installed on the power control units of the slats and flaps to determine their serial numbers; and replacing any POBs having affected serial numbers with new, serviceable, or modified POBs. This action is necessary to prevent failure of the retaining ring on the POBs, which could result in slat or flap blowback or runaway, with consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–201–AD'' in the

subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–201–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advises that the manufacturer has found that some pressure-off brakes (POBs) installed on the power control units of the slats and flaps have been operated beyond the allowable life limit of 12,000 flight cycles. This condition, if not corrected, could result in failure of the retaining ring on the POBs, which could result in slat or flap blowback or runaway, with consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001, which describes procedures for inspecting the POBs installed on the power control units of the slats and flaps to determine the serial numbers of those POBs, and replacing affected POBs with new, serviceable, or modified POBs. The DGAC classified a previous issue of that service bulletin as mandatory and issued French airworthiness directive 2001–185(B), dated May 16, 2001, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletin refers to Liebherr-Aerospace Lindenberg Service Bulletin 511A0100–27–03, dated November 16, 2000, as the appropriate source of information for identifying the serial numbers of POBs that must be replaced, and as a source for additional service information for replacing the POBs.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Referenced Service Bulletins

Operators should note the following differences among the proposed AD and referenced service bulletins:

- Although the Accomplishment Instructions of the referenced service bulletins describe procedures for reporting inspection results to the manufacturer, this proposed AD would not require such reporting.
- Although the Accomplishment Instructions of the Liebherr-Aerospace Lindenberg service bulletin specify that POBs with affected serial numbers must be returned to the POB manufacturer, this proposed AD would not require this action.
- Although the Airbus service bulletin states that, ''if the affected POB is not available,'' the POB may be replaced at the next scheduled ''A''-check, this proposed AD would require replacement of any affected POB with a new, serviceable, or modified POB before further flight. We have determined that the compliance time of 18 months for performing the required inspection to determine whether an affected POB is installed on the airplane provides an appropriate interval of time in which any required parts can be obtained.

Cost Impact

We estimate that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,990, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost

impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2001–NM–201–AD.

Applicability: All Model A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the retaining ring on the pressure-off brakes (POBs) of the power control units of the slats and flaps, which could result in slat or flap blowback or runaway, with consequent reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD: Inspect the identification plates of the POBs installed on the power control units of the slats and flaps to determine the serial numbers of the POBs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001.

Note 1: Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001, refers to Liebherr-Aerospace Lindenberg Service Bulletin 511A0100–27–03, dated November 16, 2000, as the appropriate source for identifying affected serial numbers of POBs, and as an additional source of service information for replacing affected POBs.

Replacement

(b) For any POB with an affected serial number, as identified in Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001: Before further flight, replace the POB with a new or serviceable POB that does not have an affected serial number, or with a POB that has been modified per the Accomplishment Instructions of Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001. Replace the POB per the Accomplishment Instructions of Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001.

Actions Accomplished Previously

(c) Inspections and replacements accomplished before the effective date of this AD per Airbus Service Bulletin A310–27–2096, dated March 21, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Parts Installation

(d) As of the effective date of this AD, no person may install, on any airplane, a POB with a part number and serial number listed in Airbus Service Bulletin A310–27–2096, Revision 01, dated September 19, 2001.

No Reporting or Return of Parts Is Required

(e) Although the service bulletins referenced in this AD specify to submit certain information and return POBs with affected serial numbers to the POB manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–185(B), dated May 16, 2001.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7292 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–331–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require rework/retrofit of the wardrobe shelf assembly. This action is necessary to prevent the wardrobe shelf and attached equipment separating from the attachment in the event of a hard landing, which could impede the egress of passengers in the event of an emergency evacuation. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–331–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from

Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Leung Lee, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, Suite 410, New York 11590; telephone (516) 228–7309; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–331–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that the retention system of the upper wardrobe shelf attachments was found to be under strength. This condition, if not corrected, could result in the wardrobe shelf and attached equipment separating from the attachment in the event of a hard landing, which could impede the egress of passengers in the event of an emergency evacuation.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–25–311, Revision 'B,' dated December 15, 2000, which describes procedures for rework/retrofit of the wardrobe shelf assembly. Accomplishment of the actions specified in the service bulletin is intended to address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–17, effective June 15, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $1,387 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,366, or $2,687 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–331–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 452, 464, 490, 506, 508 through 531 inclusive, and 535; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wardrobe shelf and attached equipment separating from the attachment in the event of a hard landing, which could impede the egress of passengers in the event of an emergency evacuation, accomplish the following:

Rework/Retrofit

(a) Within 12 months after the effective date of this AD, rework/retrofit the wardrobe shelf assembly per the Accomplishment Instructions of Bombardier Service Bulletin 8–25–311, Revision 'B,' dated December 15, 2000.

(b) Rework/retrofit of the wardrobe shelf assembly accomplished before the effective date of this AD per Bombardier Service Bulletin 8–25–311, dated December 14, 1999; or Revision 'A,' dated February 8, 2000; is acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–17, effective June 15, 2001.

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7285 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; A300 B4–600, A300 B4–600R, A300 C4–605R Variant F, A300 F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and A300 B4; A300 B4–600, A300 B4–600R, A300 C4–605R Variant F A300 F4–600R (collectively called A300–600); and A310 series airplanes. This proposal would require an inspection to detect breaks in the bottom flange fitting of the ram air turbine (RAT); and corrective actions, if necessary. This proposal would also require submission of an inspection report to the airplane manufacturer. This action is necessary to prevent failure of the RAT yoke fitting, which could result in the loss of RAT function and possible loss of critical flight control in the event of certain emergency situations. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–123–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–123–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

2003–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and A300 B4; A300 B4–600, A300 B4–600R, A300 C4–605R Variant F, A300 F4–600R (collectively called A300–600); and A310 series airplanes. The DGAC advises that, during scheduled maintenance on a Model A310 series airplane, an operator reported that the swivel coupling of the ram air turbine (RAT) yoke fitting was found broken. Investigation along the corner radius of the bottom flange fitting of the part showed that the failure was associated with abnormal static loads. The RAT drives a pump that allows one hydraulic system to be pressurized in order to maintain critical flight control in the event of certain emergency situations. Failure of the RAT yoke fitting, if not corrected, could result in the loss of RAT function and possible loss of critical flight control.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–57A0241, dated March 6, 2003; AOT A300–57A6096, dated March 6, 2003; and AOT A310–57A2085, dated March 6, 2003. These AOTs describe procedures for inspecting the bottom flange fitting of the RAT for damage, and replacing it with a new part, if necessary. The DGAC classified these AOTs as mandatory and issued French airworthiness directive 2003–149(B), dated April 16, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Among the Proposed Rule, the AOTs, and the French Airworthiness Directive

The French airworthiness directive mandates, and the AOTs describe, a one-time inspection of the yoke fitting for the RAT swivel coupling. However, because the root cause has not been identified, this proposed AD would require repetitive inspections. We find it necessary to require these repetitive inspections to ensure the safety of the fleet until a terminating action can be developed.

Although the AOTs and the French AD do not give a compliance time for submitting inspection reports to the manufacturer, this proposed AD would require submission of such reports within 60 days following any inspection.

Interim Action

This proposed AD is considered to be interim action. The inspection reports that would be required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

The FAA estimates that 165 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,725, or $65 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–123–AD.

Applicability: Model A300 B2 and A300 B4; A300 B4–600, A300 B4–600R, A300 C4–605R Variant F, A300 F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ram air turbine (RAT) yoke fitting, which could result in the loss of RAT function and possible loss of critical flight control in the event of certain emergency situations, accomplish the following:

All Operators Telex (AOT) References

(a) The term ''All Operators Telex,'' or ''AOT'' as used in this AD, means the following AOTs, as applicable:

(1) For Model A300 B2 and A300 B4 series airplanes: Airbus All Operators Telex A300–57A0241, dated March 6, 2003;

(2) For Model A300 B4–600, A300 B4–600R, A300 C4–605R Variant F, and A300 F4–600R (collectively called A300–600) series airplanes: Airbus All Operators Telex A300–57A6096, dated March 6, 2003; and

(3) For Model A310 series airplanes: Airbus All Operators Telex A310–57A2085, dated March 6, 2003.

Detailed Inspection and Replacement, If Necessary

(b) Within 600 flight hours or 3 months after the effective date of this AD, whichever occurs first: Perform a detailed inspection of the bottom flange fitting of the yoke fitting for the RAT swivel coupling in accordance with the applicable AOT.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If the flange fitting is not broken, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 600 flight hours.

(2) If the flange fitting is broken, before further flight, replace the flange fitting with a new flange fitting in accordance with the applicable AOT. Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 600 flight hours.

Inspection Report

(c) Submit a report of the findings, both positive (broken or cracked fittings) and negative (no findings) of the initial inspection required by paragraph (b) of this AD; thereafter report only positive findings of the repetitive inspections required by paragraphs (b)(1) and (b)(2) of this AD. Send the reports to Airbus, Customer Service Engineering, Attention: Mr. Xavier Jolivet, SEA22, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax number (33) 561933614, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For inspections done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(2) For inspections done prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–149(B), dated April 16, 2003.

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7304 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–106681–02]

RIN 1545–BA59

Modification of Check the Box

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that clarify that qualified REIT subsidiaries, qualified subchapter S subsidiaries, and single owner eligible entities that are disregarded as entities separate from their owners are treated as separate entities for purposes of any Federal tax liability for which the entity is liable. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by June 30, 2004. Outlines of topics to be discussed at the public hearing scheduled for July 22, 2004, at 10 a.m., must be received by July 1, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106681–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–106681–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, James M. Gergurich, (202) 622–3070; concerning submissions and the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under the Internal Revenue Code and its regulations, three types of entities may be disregarded as entities separate from their owners: qualified REIT subsidiaries (within the meaning of section 856(i)(2)), qualified subchapter S subsidiaries (within the meaning of section 1361(b)(3)(B)), and single owner eligible entities (within the meaning of § 301.7701–3(a)) (each, a disregarded entity).

Section 856(i)(1) provides that a qualified REIT subsidiary (QRS) shall not be treated as a separate corporation. Under section 856(i)(2), a QRS is defined as any corporation 100 percent of the stock of which is held by a real estate investment trust (REIT), unless the REIT and the corporation jointly elect under section 856(l) that the corporation shall be treated as a taxable REIT subsidiary. Such election may be revoked at any time with the consent of both the corporation and the REIT.

Section 1361(b)(3)(A) similarly provides that a qualified subchapter S corporation (QSub) shall not be treated as a separate corporation. Under section 1361(b)(3)(B), a QSub is defined as any eligible domestic corporation that is wholly owned by an S corporation and that the S corporation elects to treat as a QSub.

In addition, under § 301.7701–3(b)(1) and (2), an eligible entity with a single owner may be disregarded as an entity separate from its owner. Section 301.7701–3(b)(1)(ii) provides that a domestic eligible entity with a single owner is disregarded unless the entity makes an election to be classified as an association (and thus a corporation under § 301.7701–2(b)(2)). Section 301.7701–3(b)(2)(C) provides that a foreign eligible entity with a single owner that does not have limited liability is disregarded unless the entity elects to be classified as a corporation. Under § 301.7701–3(c), a single owner eligible entity that has elected to be treated as a corporation and a foreign eligible entity with a single owner that has limited liability (that would otherwise be treated as a corporation

under § 301.7701–3(b)(2)(i)(B)) may elect, subject to certain limitations, to be disregarded.

Explanation of Provisions

As described above, a taxable entity may become disregarded in a variety of circumstances. For example, if a REIT acquires all of the stock of a corporation, the corporation will become a QRS that is not treated as a separate corporation. Likewise, an S corporation may elect to treat a wholly owned eligible domestic corporation as a QSub that is not treated as a separate corporation. It is also possible for a disregarded entity to be the survivor of a merger of a taxable entity (for example, a corporation) and the disregarded entity. Although a disregarded entity generally is not liable for Federal tax liabilities of its owner with respect to taxable periods during which it is disregarded, the disregarded entity may be liable for Federal taxes with respect to taxable periods during which it was not disregarded or because it is the successor or transferee of a taxable entity.

The proposed regulations do not address the question of whether the disregarded entity is, in fact, either liable for Federal taxes or entitled to a refund or credit of Federal tax. Rather, the regulations clarify that if a disregarded entity is liable for Federal taxes, the disregarded entity will be treated as an entity separate from its owner for purposes of those liabilities, such that assessment may be made against the disregarded entity, the assets of the disregarded entity may be subject to lien and levy, and the disregarded entity may consent to extend the period of limitations on assessment. In addition, the regulations clarify that if a disregarded entity is entitled to a refund or credit of Federal tax, the disregarded entity will be treated as an entity separate from its owner for purposes of that refund or credit.

Proposed Effective Date

These regulations are proposed to apply on or after April 1, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 22, 2004, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments by June 30, 2004 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by July 1, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is James M. Gergurich of the Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.856–9 is added to read as follows:

§ 1.856–9 Treatment of certain qualified REIT subsidiaries.

(a) *In general.* A qualified REIT subsidiary, even though it is otherwise not treated as a corporation separate from the REIT, is treated as a separate corporation for purposes of:

(1) Federal tax liabilities of the qualified REIT subsidiary with respect to any taxable period for which the qualified REIT subsidiary was treated as a separate corporation.

(2) Federal tax liabilities of any other entity for which the qualified REIT subsidiary is liable.

(3) Refunds or credits of Federal tax.

(b) *Examples.* The following examples illustrate the application of paragraph (a) of this section:

Example 1. X, a calendar year taxpayer, is a domestic corporation 100 percent of the stock of which is acquired by Y, a real estate investment trust, in 2002. X was not a member of a consolidated group at any time during its taxable year ending in December 2001. Consequently, X is treated as a qualified REIT subsidiary under the provisions of section 856(i). In 2004, the Internal Revenue Service (''IRS'') seeks to extend the period of limitations on assessment for X's 2001 taxable year. Because X was treated as a separate corporation for its 2001 taxable year, X is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in *Example 1,* except that upon Y's acquisition of X, Y and X jointly elect under section 856(l) to treat X as a taxable REIT subsidiary of Y. In 2003, Y and X jointly revoke that election. Consequently, X is treated as a qualified REIT subsidiary under the provisions of section 856(i). In 2004, the IRS determines that X miscalculated and underreported its income tax liability for 2001. Because X was treated as a separate corporation for its 2001 taxable year, the deficiency may be assessed against X and, in the event that X fails to pay the liability after notice and demand, a general tax lien will arise against all of X's property and rights to property.

Example 3. X is a qualified REIT subsidiary of Y under the provisions of section 856(i). In 2001, Z, a domestic corporation that reports its taxes on a calendar year basis, merges into X in a state law merger. Z was not a member of a consolidated group at any time during its taxable year ending in December 2000. Under the applicable state law, X is the successor to Z and is liable for all of Z's debts. In 2004, the IRS seeks to extend the period of limitations on assessment for Z's 2000 taxable year. Because X is the successor to Z and is liable for Z's 2000 taxes that remain unpaid, X is the proper party to sign the consent to extend the period of limitations.

(c) *Effective date.* This section applies on or after April 1, 2004.

Par. 3. Section 1.1361–4 is amended as follows:

1. In paragraph (a)(1), the first sentence is amended by adding the language ''and (a)(6)'' immediately following the language ''Except as otherwise provided in paragraph (a)(3)''.

2. Paragraph (a)(6) is added.

The addition reads as follows:

§ 1.1361–4 Effect of Qsub election.

(a) * * *

(6) *Treatment of certain QSubs*—(i) *In general.* A QSub, even though it is otherwise not treated as a corporation separate from the S corporation, is treated as a separate corporation for purposes of:

(A) Federal tax liabilities of the QSub with respect to any taxable period for which the QSub was treated as a separate corporation.

(B) Federal tax liabilities of any other entity for which the QSub is liable.

(C) Refunds or credits of Federal tax.

(ii) *Examples.* The following examples illustrate the application of paragraph (a)(6)(i) of this section:

Example 1. X has owned all of the outstanding stock of Y, a domestic corporation that reports its taxes on a calendar year basis, since 2001. X and Y do not report their taxes on a consolidated basis. For 2003, X makes a timely S election and simultaneously makes a QSub election for Y. In 2004, the Internal Revenue Service (''IRS'') seeks to extend the period of limitations on assessment for Y's 2001 taxable year. Because Y was treated as a separate corporation for its 2001 taxable year, Y is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in *Example 1,* except that in 2004, the IRS determines that Y miscalculated and underreported its income tax liability for 2001. Because Y was treated as a separate corporation for its 2001 taxable year, the deficiency for Y's 2001 taxable year may be assessed against Y and, in the event that Y fails to pay the liability after notice and demand, a general tax lien will arise against all of Y's property and rights to property.

Example 3. X is a QSub of Y. In 2001, Z, a domestic corporation that reports its taxes on a calendar year basis, merges into X in a state law merger. Z was not a member of a consolidated group at any time during its taxable year ending in December 2000. Under the applicable state law, X is the successor to Z and is liable for all of Z's debts. In 2003, the IRS seeks to extend the period of limitations on assessment for Z's 2000 taxable year. Because X is the successor to Z and is liable for Z's 2000 taxes that remain unpaid, X is the proper party to execute the consent to extend the period of limitations on assessment.

(iii) *Effective date.* This paragraph (a)(6) applies on or after April 1, 2004.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.7701–2 is amended as follows:

1. Paragraph (c)(2)(iii) is added.

2. Paragraph (e) is revised.

The additions and revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iii) *Tax liabilities of certain disregarded entities*—(A) *In general.* An entity that is otherwise disregarded as separate from its owner is treated as an entity separate from its owner for purposes of:

(*1*) Federal tax liabilities of the entity with respect to any taxable period for which the entity was not disregarded.

(*2*) Federal tax liabilities of any other entity for which the entity is liable.

(*3*) Refunds or credits of Federal tax.

(B) *Examples.* The following examples illustrate the application of paragraph (c)(2)(iii)(A) of this section:

Example 1. In 2001, X, a domestic corporation that reports its taxes on a calendar year basis, merges into Z, a domestic LLC wholly owned by Y that is disregarded as an entity separate from Y, in a state law merger. X was not a member of a consolidated group at any time during its taxable year ending in December 2000. Under the applicable state law, Z is the successor to X and is liable for all of X's debts. In 2004, the Internal Revenue Service (''IRS'') seeks to extend the period of limitations on assessment for X's 2000 taxable year. Because Z is the successor to X and is liable for X's 2000 taxes that remain unpaid, Z is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in *Example 1,* except that in 2002, the IRS determines that X miscalculated and underreported its income tax liability for 2000. Because Z is the successor to X and is liable for X's 2000 taxes that remain unpaid, the deficiency may be assessed against Z and, in the event that Z fails to pay the liability after notice and demand, a general tax lien will arise against all of Z's property and rights to property.

* * * * *

(e) *Effective date.* (1) Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997, except that paragraph (b)(6) of this section applies on or after January 14, 2002, to a business entity wholly owned by a foreign government regardless of any prior entity classification, and paragraph (c)(2)(ii) of this section applies to taxable years beginning after January 12, 2001. The reference to the Finnish, Maltese, and Norwegian entities in paragraph (b)(8)(i) of this section is applicable on November 29, 1999. The reference to the Trinidadian entity in paragraph (b)(8)(i) of this section applies to entities formed on or after November 29, 1999. Any Maltese or Norwegian entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999, may elect by February 14, 2000, to be classified for Federal tax purposes as an entity other than a corporation retroactive to any period from and including January 1, 1997. Any Finnish entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999, may elect by February 14, 2000, to be classified for Federal tax purposes as an entity other than a corporation retroactive to any period from and including September 1, 1997.

(2) Paragraph (c)(2)(iii) of this section applies on or after April 1, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–7088 Filed 3–31–04; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CCGD11–04–002]

RIN 1625–AA01

Anchorage Regulation; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create an anchorage ground adjacent to

existing Anchorage 8 that can be used by Coast Guard Vessel Traffic Services (VTS) when the number of vessels requesting to anchor in Anchorages 8 and 9 exceeds the capacity of these two anchorages. This area has been used twice in the past and the Captain of the Port has recognized the potential for needing this anchorage ground in the future. Having the anchorage ground published in the **Federal Register** will allow the Coast Guard to define its use and location, and establish procedures for notifying the maritime public.

DATES: Comments and related material must reach the Coast Guard on or before June 1, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD11–04–002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Due to the trend toward larger ships arriving in San Francisco Bay and the growth of faster marine transportation systems, use of Anchorages 8 and 9 in San Francisco Bay has increased. In addition to more vessels needing to anchor while awaiting the departure of other vessels at berth, periodic labor strikes and disputes have caused delays in the turnaround time of cargo, and filled Anchorages 8 and 9 to capacity. On two occasions, Vessel Traffic Services San Francisco has used an anchorage ground around Anchorage 8 to accommodate vessels when the safe capacity of Anchorages 8 and 9 has been exceeded. According to 33 CFR 160.5, Commanding Officers, Vessel Traffic Services are delegated authority under 33 CFR 1.01–30 to issue anchorage orders to vessels required to participate in a Vessel Traffic Service.

In this proposed rulemaking, to address the continuing need for additional anchorage space, the Coast Guard is proposing to create a new anchorage ground 8A, which can be used by VTS San Francisco when needed.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 110.224 to add Anchorage 8A, which can be used as needed by VTS San Francisco. This anchorage ground, located immediately west and south of existing Anchorage 8, will allow VTS San Francisco to accommodate the safe anchoring of vessels when the safe capacity of Anchorages 8 and 9 has been exceeded.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation will not be significant because the anchorage will only be used when unusual circumstance require that it be activated, recreational traffic can still traverse the anchorage area when necessary, and the temporary anchorage area only takes up a small portion of San Francisco Bay. In addition, this temporary anchorage area has been used twice in the past to accommodate vessels during labor disputes that resulted in anchorages 8 and 9 being filled to capacity.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities for the reasons discussed in the Regulatory Evaluation above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation because we are changing an anchorage regulation.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. In § 110.224—

a. In paragraph (d), revise Table 110.224(D)(1) by adding immediately following entry for Anchorage No. 8, a new entry for Anchorage No. 8A and add a new note n'' to notes at the end of the table and;

b. In paragraph (e), renumber paragraphs (6) through (21) as paragraphs (7) through (22) and add new paragraph (e)(6) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

* * * * *

(d)(1) * * *

TABLE 110.224(D)(1)

Anchorage No.	General location	Purpose	Specific regulations
* * * * * * *			
8A	.....do	.....do	Notes a, b, c, n.
* * * * * * *			

Notes: * * *.

n. This anchorage ground will be activated by VTS San Francisco when Anchorages 8 and 9 are at capacity and additional anchorage capacity in the vicinity of Alameda is required. VTS will notify a vessel that this anchorage is activated and available for use when anchorages 8 and 9 are full, and a vessel requests permission from VTS to anchor in anchorage 8 or 9.

(e) * * *

(6) Anchorage No. 8A. In San Francisco Bay bounded by the following lines: Beginning at latitude 37°47′35.5″ N and longitude 122°21′50″ W; thence south-southwesterly to latitude 37°47′05″ N and longitude 122°22′07.5″ W; thence south-southeasterly to latitude 37°46′30″ N and longitude 122°21′56″ W; thence easterly along the northern border of Anchorage 9 to

latitude 37°46′21.5″ N and longitude 122°19′07″ W; thence northerly to latitude 37°46′34.5″ N and longitude 122°19′05.5″ W; thence westerly to latitude 37°46′36.5″ N and longitude 122°19′52″ W; thence westerly along the southern border of anchorage 8 to latitude 37°46′40″ N and longitude 122°21′23″ W; thence northwesterly along the southwestern border of anchorage 8 back to the beginning point (NAD 83).

* * * * *

Dated: March 1, 2004.

Kevin J. Eldridge,

Rear Admiral, U.S. Coast Guard, District Commander, Eleventh Coast Guard District.

[FR Doc. 04–7273 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–010]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating requirements for the Henderson Avenue bascule span bridge, across Bayou Portage at Pass Christian, Mississippi. Presently, the bridge is required to open on signal. The proposed rule would require that a two-hour advance notice be provided for an opening of the draw to navigation.

DATES: Comments and related material must reach the Coast Guard on or before June 30, 2004.

ADDRESSES: You may mail comments and related material to Commander (obc), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–04–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The old low-level Henderson Avenue bascule span bridge, across Bayou Portage at Pass Christian, Mississippi, has been demolished and removed and the new, mid-level bascule span bridge is being constructed on the exact same alignment. The new bridge will be opened to traffic and placed in service on April 10, 2004. The old bridge provided a vertical clearance of 11 feet above mean high water in the closed-to-navigation position and a horizontal clearance of 70 feet between fenders. The replacement mid-level bascule span bridge provides a vertical clearance of 29.5 feet above mean high water in the closed-to-navigation position with a horizontal clearance of 75.5 feet between fenders.

A special operating regulation previously existed for the old bridge, which stated that the draw of the bridge would open on signal if at least two hours notice was given. When the old bridge was removed, the special operating regulation was removed. When the new bridge is completed and placed in service, it would normally be required to open on signal as per 33 CFR 117.5.

Since the new bridge provides significantly greater vertical clearance in the closed-to-navigation position than the old bridge, the Harrison County Board of Supervisors predicts that even fewer navigation openings will be required than was required for the old bridge and that it is not necessary to have the bridge manned 24 hours per day seven days per week. Therefore, they have requested that a two-hour notice requirement for an opening to navigation be authorized for the new bridge.

The Coast Guard agrees that the previous opening requirements are appropriate for the new bridge. A temporary rule [CGD08–04–007] is being published elsewhere in today's **Federal Register** to authorize the proposed schedule for a six-month period from April 10, 2004 through October 10, 2004, to allow the new bridge to operate under the same requirements that existed for the old bridge. The temporary rule provides that during this period, the draw of the Henderson Avenue bascule span bridge across Bayou Portage, mile 2.0 at Pass Christian, MS will open on signal if at least two hours notice is given to the Harrison County Board of Supervisors. During this period, the Coast Guard is requesting public comments on the effects of the proposed 2-hour notice requirement for openings of the draw to navigation and will gather data on the number of vessels passing through the bridge each day, and the number requiring and not requiring an opening. The Coast Guard will review the data including logs of drawbridge openings and evaluate public comment to help determine if the proposed permanent special drawbridge operating regulation isappropriate.

Navigation at the site of the bridge consists primarily of recreational pleasure craft, including sailing vessels, and tugs with barges in tow which service one concrete facility upstream of the bridge. Alternate routes are not available to marine traffic.

Discussion of Proposed Rule

The proposed rule change to 33 CFR part 117 would require that a two-hour notice be given to the Harrison County Board of Supervisors for the bridge to be opened to navigation.

Regulatory Evaluation

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

''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

A special operating regulation existed for the old bridge, which also required a two-hour notice for an opening of the draw. The Coast Guard did not received any complaints regarding the drawbridge operating schedule for the many years that the old bridge was operated under that regulation. The new replacement bridge provides significantly greater navigation clearances than the old bridge, and the number of openings are predicted to correlate with the increased clearances accordingly. Commercial navigation is expected to be able to move more freely through the new structure. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect a limited number of small entities. These entities include the operators of vessels, which service a concrete facility, the only business located on Bayou Portage upstream of the bridge. This proposed rule will have no impact on any small entities because the proposed regulation applies to a bridge with greater navigational clearances than the bridge it replaced which had the same regulation before it was removed.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub L. 102–587, 106 Stat. 5039.

2. Section 117.684 is added to read as follows:

§ 117.684 Bayou Portage

The draw of the Henderson Avenue bridge, mile 2.0, at Pass Christian, shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: March 8, 2004.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–7271 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61, and 69

[CC Docket Nos. 96–262, 94–1, 98–157, and CCB/CPD File No. 98–63; DA 04–713]

1999 Access Reform Docket: Notice of Dismissal of Petitions for Reconsideration and Clarification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is a notification of dismissal of petitions for reconsideration and clarification in the 1999 Access Charge Reform Docket. The Commission on March 16, 2004, issued a public notice of dismissal of petitions for reconsideration and clarification in this docket. The parties that previously filed these petitions did not respond to the Commission's requests to refresh the record in these proceedings and expressed no intent to pursue their petitions. As a result, any interested parties are hereby notified that these petitions have been dismissed.

FOR FURTHER INFORMATION CONTACT: Marv Sacks, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: On January 8, 2004, the Wireline Competition Bureau issued a public notice requesting parties that had filed petitions for reconsideration and clarification in the 1999 Access Charge Reform Docket to file a supplemental notice indicating those issues that the parties still wish to be reconsidered or clarified. The notice was published in the **Federal Register** on January 21, 2004, and comments were due February 20, 2004. *See* 69 FR 2862, January 21, 2004. The notice was issued because the petitions for reconsideration and clarification were filed several years ago, and the passage of time and various intervening developments, including additional Commission orders and proceedings regarding pricing flexibility and the pricing of special access services, may have rendered the records developed in response to those petitions stale. The public notice further stated that the Commission would deem such petitions withdrawn and would dismiss them unless parties indicated an intent to pursue their respective petitions for reconsideration no later than 30 days after publication of the public notice in the **Federal Register**. The Bureau did not receive any filings that responded to the notice within this time frame from parties that had previously filed petitions for reconsideration and clarification. As a result, the Commission on March 16, 2004, issued a public notice of dismissal of petitions for reconsideration and clarification in this docket.

Federal Communications Commission.

Deena M. Shetler,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 04–7377 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket Nos. 96–262, 94–1, 91–213, 95–72; DA 04–691]

1997 Access Reform Docket: Notice of Dismissal of Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is a notification of dismissal of petitions for reconsideration in the 1997 Access Charge Reform Docket. The Commission on March 12, 2004, issued a public notice of dismissal of petitions for reconsideration in this docket. The parties that previously filed these petitions did not respond to the Commission's requests to refresh the record in these proceedings and expressed no intent to pursue their petitions. As a result, any interested parties are hereby notified that these petitions have been dismissed.

FOR FURTHER INFORMATION CONTACT: Marv Sacks, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: On December 15, 2003, the Wireline Competition Bureau issued a public notice requesting parties that had filed petitions for reconsideration in the 1997 Access Charge Reform Docket to file a supplemental notice indicating those issues that the parties still wish to be reconsidered. The notice was published in the **Federal Register** on January 16, 2004, and comments were due February 17, 2004. *See* 69 FR 2560, January 16, 2004. The notice was issued because the petitions for reconsideration were filed several years ago, and the passage of time and various intervening developments, including litigation and additional Commission orders addressing access charge reform, may have rendered the records developed in response to those petitions stale. The public notice further stated that the Commission would deem such petitions withdrawn and would dismiss them unless parties indicated an intent to pursue their respective petitions for reconsideration no later than 30 days after publication of the public notice in the **Federal Register**. The Bureau did not receive any filings that responded to the notice within this time frame from parties that had previously filed petitions for reconsideration. As a result, the Commission on March 12, 2004, issued a public notice of dismissal of petitions for reconsideration in this docket.

Federal Communications Commission.

Tamara Preiss,

Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 04–7376 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–734; MM Docket No. 01–154; RM–10163]

Radio Broadcasting Services; Goldthwaite, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition for rule making filed by Charles Crawford requesting the allotment of Channel 297A at Goldthwaite, Texas. *See* 66 FR 38410, published July 24, 2001.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–154, adopted February 25, 2004, and released February 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7367 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–733; MB Docket No. 04–72; RM–10857]

Radio Broadcasting Services; Bethel and Windsor, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Eure Communications, Inc. and Lifeline Ministries, Inc. requesting the substitution of Channel 255C3 for Channel 255A at Windsor, NC, reallotment of Channel 255C3 from Windsor, NC to Bethel, NC, and modification of the license for Station WIAM to specify operation on Channel 255C at Bethel. Channel 255C3 can be allotted to Bethel at coordinates 35–48–25 and 77–22–44. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 255C3 at Bethel.

DATES: Comments must be filed on or before May 10, 2004, and reply comments on or before May 25, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW., Suite 301, Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–72, adopted March 17, 2004, and released March 19, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of l980 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

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Bethel, Channel 255C3 and by removing Channel 255A at Windsor.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7369 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 63

Thursday, April 1, 2004

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106. RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0012.

Form No.: AID 282.

Title: Supplier's Certificate Agreement with the U.S. Agency for International Development Invoice-and-Contract Abstract.

Type of Review: Renewal of information collection.

Purpose: The U.S. Agency for International Development (USAID) finances goods and related services under its Commodity Import Program which are contracted for by public and private entities in the countries receiving the USAID Assistance. Since USAID is not a party to these contracts. USAID needs some means to collect information directly from the suppliers of the goods and related services and to enable USAID to take an appropriate action against them in the event they do not comply with the applicable regulations. USAID does this by securing from the suppliers, as a condition for the disbursement of funds a certificate and agreement with USAID which contains appropriate representations by the suppliers.

Annual Reporting Burden:

Respondents: 800.

Total annual responses: 2,400.

Total annual hours requested: 2,400 hours (½ hour per response).

Dated: March 26, 2004.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 04–7305 Filed 3–31–04; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–112–3]

Vaccination of Wild Bison; Confirmation of Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are confirming our finding that the assistance of the Animal and Plant Health Inspection Service in the subcutaneous vaccination of wild, free-ranging bison in the Greater Yellowstone Area with Strain RB51 vaccine to help prevent the spread of brucellosis will not have a significant impact on the quality of the human environment. Additionally, we are advising the public of the availability of our discussion of issues raised by the public in response to an environmental assessment regarding that vaccination and the finding of no significant impact.

ADDRESSES: To obtain copies of the environmental assessment, finding of no significant impact, and our discussion of comments received, contact the National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4923. The documents are also available on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html.* At that Web site page, click on the link for ''Subcutaneous Vaccination of Wild, Free-ranging Bison in the Greater Yellowstone Area, Environmental Assessment, November 2003.''

You may also read the environmental assessment, finding of no significant impact, and comments received and our discussion of those comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, Yellowstone Brucellosis Coordinator, National Center for Animal Health Programs, VS, APHIS, Building B MSC 3E13, 2150 Centre Avenue, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by *Brucella* bacteria. It can infect cattle, bison, elk, other animals, and humans. In cattle, bison, and elk, the specific disease organism is *Brucella abortus.* In infected cattle and bison, the disease organism localizes in lymph nodes, reproductive organs, and/or the udder, causing abortion in females and systemic effects in both males and females. Brucellosis is transmitted through contaminated and untreated

milk and milk products and through direct contact with an infected aborted fetus or calf, afterbirth, or other reproductive tract discharges.

Brucellosis is considered one of the most serious diseases of livestock. While its hallmark symptom is abortion, brucellosis can also result in decreased milk production, weight loss in animals, infertility, and lameness. The Animal and Plant Health Inspection Service (APHIS) has worked for years to eliminate this disease from the United States.

The only known reservoir of *Brucella abortus* in the United States occurs in wild, free-ranging populations of bison and elk in the Greater Yellowstone Area (GYA), which comprises areas of Idaho, Montana, and Wyoming. The significance of wildlife in the GYA as a reservoir of brucellosis and potential source of infection for cattle in the GYA has been widely recognized. Additionally, free-ranging bison herds in the GYA are a natural resource of great importance.

To address the issue of brucellosis in the GYA, the U.S. Department of the Interior's National Park Service, the State of Montana, and their cooperators (including the U.S. Department of Agriculture) developed an Interagency Bison Management Plan for the bison herd in Yellowstone National Park (YNP). One of the disease management requirements of the plan is for eligible bison to be vaccinated against brucellosis. The Montana Department of Livestock (MDOL) has requested APHIS's assistance with the vaccination against brucellosis of wild, free-ranging bison calves and non-pregnant yearlings that leave YNP and migrate onto State, private, or other Federal lands.

On December 5, 2003, we published in the **Federal Register** (68 FR 68020–68021, Docket No. 03–112–1) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) examining the potential environmental effects of APHIS's involvement in the vaccination described above. Additionally, we announced the availability of a finding of no significant impact (FONSI) in which we set forth our determination that subcutaneous vaccination of free-ranging bison of the GYA with Strain RB51 vaccine would not significantly impact human health or the environment.

In the notice of availability, we solicited comments on the EA and FONSI for 30 days ending on January 5, 2004. On January 14, 2004, we published a notice in the **Federal Register** (69 FR 2110, Docket No. 03–112–2) in which we reopened the comment period and extended it until January 20, 2004. We received a total of 143 comments by January 20, 2004.

The commenters addressed a wide range of issues, including:

- Whether the EA met the procedural requirements of the National Environmental Policy Act of 1969 (NEPA). Some commenters expressed the view that APHIS's release of a FONSI before the public had a chance to comment on the EA constituted a violation of NEPA. Others questioned whether the EA contained all of the elements required of an EA under NEPA.
- Which alternative presented in the EA should be adopted
- Whether bison are affected by brucellosis and whether there have been any reported cases of free-ranging bison transmitting the disease to cattle.
- The natural role of brucellosis in the environment.
- Issues regarding the potential impacts of vaccination on bison and nontarget species, including the efficacy and safety of the Strain RB51 vaccine, the potential for stress-related maladies in bison because of vaccination, and potential erosion of the wild nature of the YNP bison herd due to handling during the vaccination process.
- Whether the EA addressed the concerns of Native Americans.
- Requests that APHIS conduct an economic analysis to assess the costs and benefits of a vaccination program and the potential effects on the local economy.

We have reviewed and considered all issues raised by the commenters. Based on that review, we are confirming our determination that APHIS' assistance with the vaccination will not significantly impact human health or the environment. We are also making available to the public our discussion of all issues raised by the commenters in a document titled ''Analysis of Comments Received on Subcutaneous Vaccination of Wild, Free-Ranging Bison in the Greater Yellowstone Area, Environmental Assessment/FONSI.'' Instructions for viewing that document, the EA, and the FONSI are included under the heading **ADDRESSES** at the beginning of this notice.

Done in Washington, DC, this 26th day of March 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–7309 Filed 3–31–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

McSutten Decision Area; Kootenai National Forest, Lincoln County, MT

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 to disclose the environmental effects of timber harvest, prescribed burning, and road management in the McSutten Decision Area (Decisions Area) on the Rexford Ranger District of the Kootenai National Forest. The Decision Area is located approximately 12 miles southwest of Eureka, Montana.

DATES: Written comments and suggestions should be postmarked or received within 30 days following publication of this notice.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 U.S. Highway 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Contact Chris Fox, Interdisciplinary Team Leader, Rexford Ranger District. Phone: (406) 296–7155.

SUPPLEMENTARY INFORMATION: The Decision Area contains approximately 62,200 acres of land within the Kootenai National Forest. Proposed activities within the Decision Area include all or portions of the following areas: T32–35N, R27–29W, PMM, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

Purpose and Need: The purpose and need for the project is: (1) Reduce fuel accumulations to decrease the likelihood that fires would become large stand-replacing wildfires; (2) restore characteristic vegetation patterns (patch sizes and stand structure) on the landscape; (3) increase habitat for wildlife species that utilize early vegetative stages and maintain huckleberry fields over time to provide foraging opportunities for wildlife and provide for social needs; (4) provide a transportation system that increases security for big game, reduces impacts to aquatic resources, improves riparian wildlife habitat, and insures economical and safe access; and (5) respond to the

social and economic needs of the public.

Proposed Activities: The Forest Service proposes to use regeneration harvest (clearcut and seedtree prescriptions) on approximately 3,376 acres, and commercial thinning on approximately 3,299 acres.

The proposed action would result in 40 openings over 40 acres, ranging from 41 to 175 acres. A 60-day public review period, and approval by the Regional Forester for exceeding the 40-acre limitation for regeneration harvest, would be required prior to the signing of the Record of Decision. This 60-day period is initiated with this notice of intent.

The proposed action includes approximately 6,675 acres of underburning following timber harvest, and approximately 1,033 acres of prescribed burning without timber harvest.

The proposed action also includes maintenance activities on portions of approximately 193 miles of road to meet Best Management Practices; decommissioning approximately six miles of roads currently restricted year-long to motor vehicles; placing approximately five miles of roads, which are currently restricted year-long to motor vehicles, in storage; and reconstructing approximately one mile of existing road.

Forest Plan Amendments: The proposed action includes a project-specific Forest Plan amendment necessary to meet the project's objectives:

An amendment to allow harvest in 41 units adjacent to existing openings in Management Area (MA) 12 (Big Game Summer Range). The amendment would be needed to suspend Wildlife and Fish Standard #7 and Timber Standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. The resulting opening sizes more closely correlate to natural disturbance patterns. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

A second amendment to allow the open road density in MA 12 (Big Game Summer Range) to be managed at greater than 0.75 miles/square mile during project implementation may be required. The amendment would be necessary to suspend Facilities Standard #3, which states that open road density should be maintained at 0.75 miles/square mile.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities will be implemented. Additional alternatives will be considered to achieve the project's purpose and need for action, and to respond to specific resource issues and public concerns.

Public Involvement and Scoping: In January 2004, efforts were made to involve the public in considering management opportunities within the Decision Area. A scoping package was mailed for public review on January 30, 2004. An open house was held on February 18, 2004. Comments received prior to this notice will be included in the documentation for the EIS.

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 2004. At that time EPA will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS (FEIS) is scheduled to be completed by August 2004. In the FEIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the DEIS, and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS' 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.C 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage 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 class DEIS 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 and respond to them in the FEIS.

To be most helpful, comments on the DEIS should be as specific as possible, and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations (40 CFR 1503.3) for implementing the procedural provisions of the National Environmental Policy Act.

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Glen M. McNitt, District Ranger, Rexford Ranger District.

Dated: March 23, 2004.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 04–7362 Filed 3–31–04; 8:45 am]

BILLING CODE 3410–71–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–383), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, April 21, 2004, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the Idaho Counties Risk Management Program (ICRMP) building, 3100 South Vista Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: March 25, 2004.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–7346 Filed 3–31–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2003) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of April 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
France: Sorbitol, A–427–001	4/1/03–3/31/04
Norway: Fresh and Chilled Atlantic Salmon, A–403–801	4/1/03–3/31/04
The People's Republic of China:.	
Automotive Replacement Glass Windshields A–570–867	4/1/03–3/31/04
Brake Rotors, A–570–846	4/1/03–3/31/04
Non-Malleable Cast Iron Pipe Fittings, A–570–875	4/1/03–3/31/04
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	4/1/03–3/31/04
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon C–403–802	1/1/03–12/31/03

Suspension Agreements

None.

In accordance with section 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2004. If the Department does not receive, by the last day of April 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 25, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 04–7395 Filed 3–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

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

ACTION: Notice of initiation of five-year (''sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review*, which covers these same orders.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

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

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product
A–357–405	731–TA–208	Argentina	Barbed Wire & Barbless Wire Strand.
A–560–803	731–TA–787	Indonesia	Extruded Rubber Thread.
A–351–605	731–TA–326	Brazil	Frozen Concentrated Orange Juice.
A–570–825	731–TA–653	China	Sebacic Acid.
A–423–808	731–TA–788	Belgium	Stainless Steel Plate in Coils.
C–423–809	731–TA–376	Belgium	Stainless Steel Plate in Coils.
A–122–830	731–TA–789	Canada	Stainless Steel Plate in Coils.
A–475–822	731–TA–790	Italy	Stainless Steel Plate in Coils.
C–475–823	731–TA–377	Italy	Stainless Steel Plate in Coils.
A–580–831	731–TA–791	Korea	Stainless Steel Plate in Coils.
A–791–805	731–TA–792	South Africa	Stainless Steel Plate in Coils.
C–791–806	731–TA–379	South Africa	Stainless Steel Plate in Coils.
A–583–830	731–TA–793	Taiwan	Stainless Steel Plate in Coils.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*''.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset Web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771 (9)(C), (D), (E), (F), and (G) of the Act) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: March 15, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–7389 Filed 3–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Final Results of Countervailing Duty Changed Circumstances Reviews and Revocation of the Orders, in Whole

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

ACTION: Notice of final results of countervailing duty changed circumstances reviews and revocation of the orders, in whole.

SUMMARY: On January 28, 2004, the Department of Commerce (the Department) published a notice of preliminary results of changed circumstances reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See* Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Preliminary Results of Countervailing Duty Changed Circumstances Reviews, 69 FR 4114 (January 28, 2004) (Preliminary Results). In the Preliminary Results, we invited interested parties to comment on the Department's preliminary intent to revoke in whole the countervailing duty orders. We did not receive any comments. As a result, we conclude that producers accounting for substantially all of the production of the domestic like products to which these orders pertain lack interest in the relief provided by the orders. Therefore, we revoke these orders, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after April 1, 2004.

EFFECTIVE DATE: (April 1, 2004.)

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2209.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. See Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany, 58 FR 43756 (August 17, 1993). On October 22, 2003, International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Steel Corporation, requested that the Department revoke the countervailing duty orders, effective April 1, 2004, based on their lack of further interest in these proceedings. In response to this request, on December 3, 2003, the Department published a notice of initiation of changed circumstances reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See* Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Initiation of Countervailing Duty Changed Circumstances Reviews, 68 FR 67657 (December 3, 2003) (Initiation Notice)

On January 28, 2004, the Department published a notice of preliminary results of changed circumstances reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See* Preliminary Results. We did not receive any comments on our preliminary results.

Scope of the Orders

The products covered by these reviews are certain corrosion-resistant carbon steel flat products and cut-to-length steel plate products from Germany.

(1) Certain corrosion-resistant carbon steel flat products: The scope of countervailing duty order on certain corrosion-resistant carbon steel flat products (corrosion-resistant) includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope 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. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a ''20 percent—60 percent—20 percent'' ratio. On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel. *See* Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant

Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

(2) *Certain cut-to-length carbon steel plate products:* The scope of countervailing duty order on certain cut-to-length carbon steel plate products (cut-to-length steel) includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, 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 hot-rolled carbon steel flat-rolled products in straight lengths, 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 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (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, and 7212.50.0000. Included 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. Excluded is grade X–70 plate. On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2. *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part,* 64 FR 46343 (August 25, 1999).

The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Final Results of Reviews and Revocation of the Countervailing Duty Orders, in Whole

Pursuant to section 751(d)(1) of the 1930 Tariff Act, as amended (the Act), and § 351.222(g) of the regulations, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review conducted under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under § 351.216 of the Department's regulations, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. The Department has interpreted ''substantially all'' production normally to mean at least 85 percent of the domestic production of the like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review,* 66 FR 52109 (October 12, 2001); *see* also, 19 CFR 351.208(c).

As noted above, in the *Initiation Notice* and in the *Preliminary Results,* the petitioners requested the revocation of these orders because they are no longer interested in maintaining the orders or in the imposition of duties on the subject merchandise as of April 1, 2004. Because the Department did not receive objections to the request for revocation of these orders from domestic producers accounting for more than 15 percent of production of the domestic like product and did not receive any comments on our *Preliminary Results,* we conclude that producers accounting for substantially all of the production of the domestic like products to which these orders pertain lack interest in the relief provided by the orders.

In accordance with 19 CFR 351.222(g), the Department determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant revocation of the orders. Therefore, the Department is revoking the orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany, in whole.

As a result of these reviews, we will instruct the U.S. Customs and Border Protection to terminate suspension of liquidation effective April 1, 2004.

This notice is published in accordance with section 751(b)(1) of the Act and §§ 351.216 and 351.222 of the Department's regulations.

Dated: March 26, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–7388 Filed 3–31–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel; Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce and is the only Federal Advisory Committee with the responsibility to advise the Under

Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters the Under Secretary refers to the Panel for review and advise.

DATES: The meeting will be held Wednesday, April 14, 2004, from 8:30 a.m. to 5 p.m. The times and agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Washington DC/Silver Spring Hilton Hotel (Maryland Room), 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Roger Parsons, Designated Federal Officer, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Phone: (301) 713–2770, Fax: (301) 713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to public participation with a 30-minute time period set aside on Wednesday, April 14 at approximately 4 p.m., for direct verbal comments or questions from the public. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 40 copies) should be submitted to the Designated Federal Official by April 6, 2004. Written comments received by the HSRP Designated Federal Official after April 6, 2004, will be distributed to the HSRP, but may not be reviewed prior to the meeting date. Approximately one hundred (100) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first served basis.

Matters To Be Considered: The meeting will include discussion on the following topics: (1) The National Survey Plan: Development, Maintenance and Revision, (2) NOAA In-house Hydrographic Surveying Capacity, (3) Hydrographic Services Contracting, (4) NOAA/University of New Hampshire Joint Hydrographic Center Activities, (5) Hydrographic Data Processing Backlog (6) Roles of Regional Navigation Managers & Navigation Response Teams, (7) National Water Level and Tidal Currents Programs, (8) Physical Oceanographic Real-Time System (9) Modeling Activities in Support of Safe Navigation, (10) Shoreline Mapping and Height Modernization Program, (11) Electronic Navigational Chart (ENC) Program, and, (12) Public Statements.

Dated: March 26, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–7280 Filed 3–31–04; 8:45 am]

BILLING CODE 3510–JE–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032604C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

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

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all of the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMPs). However, consideration of comments on the proposal is required and further review and consultation may be necessary before a final determination is made that the activity will have no significant impacts on the human environment, and that the issuance of EFPs is warranted. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue the EFP that would allow three federally permitted fishing vessels to conduct fishing operations otherwise restricted by the regulations governing the Atlantic sea scallop and Northeast multispecies fisheries. The EFP would allow the federally permitted vessels to make 12 tows per vessel for a total of 36 tows to compare a standard scallop dredge using a 10–inch (25.4 cm) twine top to a standard scallop dredge using a 10–inch (25.4 cm) twine top with the addition of a Bycatch Reduction Device (BRD) equipped with a 6–inch (15.2 cm) mesh twine top panel between the 10–inch (25.4 cm) twine top and the ring apron in order to evaluate the feasibility of using a BRD in scallop dredge gear to reduce finfish bycatch. The EFP is necessary to exempt the vessel from scallop dredge twine top restrictions.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before 5 p.m. eastern standard time April 16, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Scallop Dredge EFP Proposal.''

Comments submitted via e-mail should be sent to *scallop.EFP1@Noaa.gov*.

Comments may also be sent via facsimile (fax) to (978) 281–9135. A copy of the proposal is available from the Northeast Regional Office at the address stated above.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, 978–281–9221.

SUPPLEMENTARY INFORMATION: Ronald Smolowitz, Coonamessett Farm, Inc., submitted an application to conduct an experimental fishery to test the feasibility of using an experimental southern shrimp trawl BRD and a 6–inch (15.2 cm) twine top panel (6 meshes wide by 80 meshes long) inserted into a standard 10–inch (25.4 cm) twine top on standard scallop dredge in either the Hudson Canyon Access Area or in the open areas of Georges Bank (GB). The proposed experiment would test a standard scallop dredge with a 10–inch (25.4 cm) mesh twine top panel against an experimental scallop dredge with a BRD panel inserted into the 10–inch (25.4 cm) mesh twine top panel. The BRD panel would consist of one metal framed BRD, each with a 12–inch (30.5 cm) wide opening, incorporated into a 6–inch (15.2 cm) mesh twine panel approximately 6 meshes wide by 80 meshes long.

The proposed experiment would be conducted as soon as possible following approval of the EFP, if the final decision is to grant the EFP. The participating

vessels would be authorized to make 12 tows each in either the Hudson Canyon Access Area or the open areas of GB between depths of 20 and 50 fathoms. The proposed fishing areas on GB lie west of 67°00′ W. lat. and east of 70°00′ W. lat.; north of 40°00′ N. long. and south of 42°00′ N. long. Conducting the trips in open areas would allow the gear to be tested in areas of varying scallop and finfish abundance, as well as on different substrates. Information gathered from this experiment could be used in the consideration in future management actions under the FMP. If the BRDs can be successfully deployed in scallop gear, the researcher has stated that he is likely to request a subsequent EFP to conduct a more extensive study of BRDs as a bycatch reduction tool. The participating vessels would be allowed to retain the catch of scallops and the allowed levels of incidental catch of other species (e.g., 300 lb (136 kg) of regulated multispecies and monkfish) per trip. The EFP would allow exemptions from the following regulations under Fisheries of the Northeastern United States (50 CFR part 648): scallop dredge twine top restrictions specified at § 648.51(b)(4)(iv).

The proposed gear exemption is not expected to result in catch or bycatch beyond normal scallop operations. The only exemption is for an experimental BRD and a 6–inch (15.2 cm) twine top panel (6 meshes wide by 80 meshes long) inserted into a standard 10–inch (25.4 cm) twine top on a standard scallop dredge. The environmental impacts of this activity is not expected to exceed those already considered for the existing scallop fishery.

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

Dated: March 29, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–7344 Filed 3–31–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant R/D Tech Inc., a Canadian corporation, having a place of business at Quebec, Canada, an exclusive license in any right, title and interest the Air Force has in: U.S. Patent Application Serial No. 10/209,298, filed 30 July 2002, entitled ''Phased Array Ultrasonic NDT System for Fastener Inspections,'' by Michael Moles, Olivier Dupuis, Fabrice Cancre, Pamela Herzog, James T. Miller, and Jamie Hatmaker.

Canadian Patent Application Serial No. 2,396,117, filed 30 July 2002, entitled ''Phased Array Ultrasonic NDT System for Fastener Inspections,'' by Michael Moles, Olivier Dupuis, Fabrice Cancre, Pamela Herzog, James T. Miller, and Jamie Hatmaker.

Any objection to the grant of the license must be submitted in writing and received within fifteen (15) days from the date of publication of this Notice in order to be considered. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 100, Wright-Patterson AFB, OH 45433–7109. Telephone: (937) 255–2838; Facsimile (937) 255–3733.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–7364 Filed 3–31–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–423–001, FERC Form-423]

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

March 26, 2004.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of February 13, 2003 (68 FR 7353–54) and has responded to their comments in its submission to OMB.

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

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–423–001.

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

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 423 ''Monthly Report on the Cost and Quality of Fuels for Electric Plants.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0024.

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

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Sections 205–206 of the Federal Power Act as amended by Section 208 of the Public Utility Regulatory Policies Act (PURPA). The Commission uses the information to collect basic cost and quality of fuels data at electric generating plants on the FERC Form 423, and has used such data to conduct fuel reviews, rate investigations and to track market changes and trends in the electric wholesale market. The data is also used by other government agencies to track the supply, disposition and prices of fuel, to conduct environmental assessments, and by electric market participants and the public to assess the competitive market place. Monthly evaluation of the Form 423 data makes it possible to discern instances in which a utility's fuel costs deviate significantly from existing market prices. Such deviations may be significant since fuel costs are a significant share of the costs that underline a utility's rates. And, depending on the results of the evaluation, the Commission can either accept a utility's proposed rate as filed, or suspend the proposed rate and set the matter for hearing. The data has helped to identify the effects of the quality of fuel, market conditions, and the origin of production on fuel prices, which can signal possible procurement inefficiencies. The Commission implements the filing requirements in the Code of Regulations (CFR) under 18 CFR Parts 141.61.

5. *Respondent Description:* The respondent universe currently comprises 76 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 7,008 total hours, 584 respondents (average per year), 12 responses per respondent, and 1 hour per response (average).

7. *Estimated Cost Burden to respondents:* 7,008 hours / 2080 hours per years × $107,185 per year = $135,991. The cost per respondent is equal to $155,655.

Statutory Authority: Sections 205–206 of the FPA (16 U.S.C. 824d and e) and Section 208 of the Public Utility Regulatory Policies Act (PURPA), (16 U.S.C. 2601 *et. al.*)

Magalie R. Salas,

Secretary.

[FR Doc. E4–726 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC04–549B–000, FERC–549B]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 26, 2004.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by June 1, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–549B–000.

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

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the 'eLibrary' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

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

SUPPLEMENTARY INFORMATION: The information is collected under the requirements of FERC–549B ''Gas Pipeline Rates: Capacity Information'' (OMB No. 1902–0169) which contains both the Index of Customers Report and the Capacity Report under Part 284 of the Commission's Regulations. The information is used by the Commission to implement the statutory provisions of the sections 4, 5, and 16 of the NGA, 15 U.S.C. 717c–717o, PL. 75–688,52 Stat. 822 and 830) and Title III of the NGPA, 15 U.S.C. 3301–3432, PL. 95–621.

In Order No. 636, the Commission established a capacity release mechanism under which shippers can release firm transportation and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. In Order No. 636–A, the Commission determined that the efficiency of the capacity release mechanism would be enhanced by standardizing both the content of capacity release information and the methods by which shippers access that information.

In Order No. 637, the Commission amended its regulations in response to the growing development of more competitive markets for natural gas. In the rule, FERC revised its current regulatory framework to improve the efficiency of the market and provide captive customers with the opportunity to reduce their cost of holding long-term capacity while continuing to protect against the exercise of market power.

To create greater substitution between different forms of capacity and enhance competition across the pipeline grid, Order No. 637 also revised the regulations regarding scheduling, segmentation and flexible point rights, penalties, and reporting requirements. FERC revised pipeline scheduling procedures so that capacity release transactions can be better coordinated with the nomination process. Pipelines are required to permit shippers to segment capacity whenever feasible,

which increases potential capacity alternatives and helps to facilitate the development of market centers. The changes to the reporting requirements were to provide greater reliability about capacity availability and price data that shippers need to make informed decisions in a competitive market as well as improve shipper's and FERC's availability to monitor marketplace behavior to detect, and remedy anticompetitive behavior.

In Order No. 582, the Commission created the Index of Customers filing requirement. Pipelines are required to identify all firm transportation services and contract demand for each customer for each rate schedule. Pipelines must file on the first business day of each calendar quarter and also post the information on their Internet Web sites. These filings include the following data elements: shipper's name (full legal name), contract identifier, rate schedule, contract start date, contract end date, contract quantity, receipt points, delivery points, information on capacity held by rate zones to permit verification of reservation billing determinants, data to assess storage capacity and conjunctions restrictions if any (provisions that operate across multiple points or contracts and may limit a shipper's rights at a particular receipt or delivery point). The index contains fundamental data about the natural gas industry—how much of the pipeline's capacity, shippers have under contract. With this information, the Commission remains apprised of trends in the industry, the willingness of shippers to hold firm capacity, the average length of time capacity remains under contract, the proportion of capacity rolling over under specific provisions. This information provides the Commission with the ability to analyze capacity held on pipelines and provides capacity information to the market which aids the capacity release system by enabling shippers to locate those holding capacity rights that shippers may want to acquire. The information filed with the Commission is mandatory. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 284.12 and 13.

Action: The Commission is requesting reinstatement and a three-year approval of these reporting requirements, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent *	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
100 (Index of Customers) 100	5.66 (6)	290.9 hours (3)	297,201 hours # (1,800 hours)

* Estimated total number of responses per year = 478.95.
# Includes Index of Customers.

Estimated cost burden to respondents: 297,201 hours/2,080 hours per year × $107,185 per year = $15,315,139. The cost per respondent is equal to $153,151.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:

(1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Magalie R. Salas,
Secretary.

[FR Doc. E4–727 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–9–000]

Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

March 26, 2004.

Take notice that on March 9, 2004, Bay Gas Storage Company, Ltd. (Bay Gas) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's Regulations. Bay State requests the Commission to approve a maximum rate of $3.2993 per MMBtu for firm transportation service, and a maximum rate of $.1085 per MMBtu for interruptible transportation service under Section 311 of the Natural Gas Policy Act.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the FERRIS link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for

TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: April 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–734 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–225–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changesin Ferc Gas Tariff

March 26, 2004.

Take notice that on March 23, 2004, Columbia Gas Transmission Corporation(Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 281, with a proposed effective date of April 22, 2004.

Columbia states it is making the filing to revise its right of first refusal (ROFR) provisions in General Terms and Conditions Section 4 of its Tariff to more explicitly delineate when a shipper must exercise its ROFR, through making the timeline for exercising ROFR where there are no bids for capacity comparable to the existing timeline for exercising ROFR when bids have been received.

Columbia Gas states that copies of its filing and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–735 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–226–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 2004.

Take notice that on March 23, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 145, with a proposed effective date of April 22, 2004.

Columbia Gulf states it is making the filing to revise its right of first refusal (ROFR) provisions in General Terms and Conditions section 4 of its Tariff to more explicitly delineate when a shipper must exercise its ROFR, through making the timeline for exercising ROFR where there are no bids for capacity comparable to the existing timeline for exercising ROFR when bids have been received.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–723 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–14–000 and EL04–29–000]

Detroit Edison Company; Notice of Initiation of Proceeding and Refund Effective Date

December 2, 2003.

Take notice that on December 1, 2003, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–29–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–29–000, established pursuant section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–724 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–6–011 and RP03–173–002]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

March 26, 2004.

Take notice that on March 3, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 131,

with an effective date of May 1, 2004, and the following tariff sheets, with effective dates of March 1, 2004.

Second Revised Sheet No. 137A;
First Revised Sheet No. 140;
Original Sheet No. 140A; and
First Revised Sheet No. 141

Gulfstream states that the purpose of this filing is to comply with the Commission's Order issued in the captioned dockets on February 17, 2004. Gulfstream states that the revised tariff sheets implement a mechanism for charging and crediting OBA Parties when they cash out their imbalances.

Gulfstream states that it has served this filing on all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 1, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–736 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–449–000; RM02–1–000; RM02–1–001; and RM02–1–004]

New York Independent System Operator, Inc.; Notice of Meeting on New York Independent System Operator's Compliance With Order No. 2003

March 25, 2004.

The Commission hereby gives notice that members of its staff will meet with New York Independent System Operator, Inc. (NYISO) and New York Transmission Owners (NYTO) on March 30, 2004 from 10:30 a.m. to 12 p.m. The meeting will be held at the Commission, 888 First Street, NE., Washington, DC 20426. The purpose of the meeting is to discuss NYISO's and NYTO's joint compliance filing on Orders No. 2003 and 2003–A. The meeting is open to the public. Parties interested in further information about the meeting may contact Mary Agnes Nimis at (202) 502–8235.

During the course of the meeting, it is possible that the discussion may address matters pending in the above-captioned dockets.

Magalie R. Salas,

Secretary.

[FR Doc. E4–725 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–79–000, *et al.*]

Rochester Gas and Electric Corporation, et al.; Electric Rate and Corporate Filings

March 25, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Rochester Gas and Electric Corporation, R.E. Ginna Nuclear Power Plant, LLC

[Docket No. EC04–79–000]

Take notice that on March 23, 2004, Rochester Gas and Electric Corporation (RG&E) and R.E. Ginna Nuclear Power Plant, LLC (GNPP) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act and 18 CFR part 33 for authorization for the sale of jurisdictional facilities owned by RG&E, comprised of limited interconnection and transmission facilities related to an approximately 495 MW nuclear generating plant located in Ontario County, New York, that is commonly known as the Robert E. Ginna Nuclear Power Plant to an indirect subsidiary of Constellation Energy Group, Inc.

Comment Date: April 19, 2004.

2. Patrick C. Lynch, Attorney General of The State of Rhode Island v. Independent System Operator of New England (ISO–NE)

[Docket No. EL04–91–000]

Take notice that on March 22, 2004, Patrick C. Lynch, Attorney General of the State of Rhode Island, (Attorney General), petitioned the Commission, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 207(a)(2) for an order requiring ISO New England, Inc. to immediately issue a ruling declaring that all customers of the New England regional transmission network will be responsible to pay for planned upgrades of the E–183 transmission line, a pooled transmission facility as defined by the 100th Restated NEPOOL Agreement, located within the Cities of Providence and East Providence, Rhode Island. In the alternative, the Attorney General requests that the Commission itself directly order the requested relief.

Comment Date: April 12, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–488–004]

Take notice that on March 22, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing in accordance with section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, section 385.205 of the (Commission) regulations, 18 CFR 385.205, and in compliance with the Commission's order in Midwest Independent Transmission System Operator, Inc., 104 FERC ¶ 61,245 (2003) (September 10 Order), its Operating Protocols for Existing Generators, FERC Electric Tariff, Original Rate Schedule FERC No. 4. In addition, the Midwest ISO also renews its pending motion in the proceeding to consolidate the instant docket with FERC Docket No. ER04–458–000.

Comment Date: April 12, 2004.

4. Cross-Sound Cable Company, LLC

[Docket No. ER03–600–004]

Take notice that on March 22, 2004, Cross-Sound Cable Company, LLC (CSC LLC) submitted a compliance filing

pursuant to the Commission's February 11, 2004 order, in Docket No. ER03–600–000, 106 FERC ¶ 61,116. CSC LLC requests an effective date of February 11, 2004.

CSC LLC states that a copy of this filing has been mailed to each person designated on the official service list compiled by the Secretary of the Commission in Docket No. ER03–600–000.

Comment Date: April 12, 2004.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–1101–003]

Take notice that on March 22, 2004, PJM Interconnection, L.L.C. (PJM) filed the 180-day follow-up report, as well as the first of four six-month reports, concerning PJM's credit policy for virtual bidders, as required by the Commission's September 22, 2003 order in *PJM Interconnection, L.L.C.,* 104 FERC ¶ 61,309 (2003).

PJM states that copies of this filing have been served on all persons listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 12, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER04–377–001]

Take notice that on March 22, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Appendix and Exhibit to the Generator Special Facilities Agreement (GSFA) between PG&E and Sunrise Power Company, LLC (Sunrise II) (collectively, Parties), and submitted the GSFA and the Generator Interconnection Agreement (GIA) for redesignation. PG&E states that the revised Appendix A and Exhibit 1 reclassify certain work performed and that the filing does not modify any rate levels. PG&E also states that the Agreements were originally accepted for filing by the Commission in FERC Docket No. ER00–3294–001 and designated as Service Agreement No. 45 under FERC PG&E Electric Tariff, Sixth Revised Volume No. 5. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon the parties of record in FERC Docket Nos. ER03–1362–000 and ER04–377–000, Sunrise II, La Paloma Power Company, LLC, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: April 12, 2004.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–665–000]

Take notice that on March 22, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among Adrian Public Utilities, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: April 12, 2004.

8. NorthWestern Energy

[Docket No. ER04–666–000]

Take notice that on March 22, 2004, NorthWestern Energy, a division of NorthWestern Corporation, tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of its FERC Electric Rate Schedule 34, which is an Electric Service Agreement for Emergency-Type Service with East River Electric Power Cooperative (East River). NorthWestern Energy states that the service originally provided under Rate Schedule 34 is now being provided under a new Electric Service Agreement for Emergency-Type Service entered into between NorthWestern Energy and East River on March 3, 2004.

Comment Date: April 12, 2004.

9. Southern California Edison Company

[Docket No. ER04–667–000]

Take notice, that on March 22, 2004, Southern California Edison Company (SCE) tendered for filing the unexecuted Kirkwall Substation Agreement (Kirkwall Agreement) and a revised Service Agreement for Wholesale Distribution Service (Service Agreement) between SCE and the City of Azusa, California (Azusa). SCE requests the Kirkwall Agreement and the revised Service Agreement become effective on March 23, 2004.

The Kirkwall Agreement and the revised Service Agreement specify the terms and conditions under which SCE will provide wholesale Distribution Service from the California Independent System Operator Controlled Grid at SCE's Rio Hondo Substation to a new SCE–Azusa interconnection at Kirkwall Substation.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Azusa.

Comment Date: April 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–737 Filed 03–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–007 Arizona]

Arizona Public Service Company; Notice of Availability of Final Environmental Assessment

March 26, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of license for the major, constructed Childs Irving Hydroelectric Project. The project is located on Fossil Creek, in Yavapai and Gila counties, Arizona. The project is located entirely on lands of the National Forest System: It occupies 326.8 acres within the Coconino National Forest and 17.2 acres within the Tonto National Forest. The Commission staff has prepared a Final Environmental Assessment (FEA) on the license surrender.

The FEA contains the staff's analysis of the potential environmental impacts of the retirement of the project and the removal of most of the project facilities, and concludes that surrendering the license, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

FOR FURTHER INFORMATION CONTACT: Dianne Rodman at (202) 502–6077.

Magalie R. Salas,

Secretary.

[FR Doc. E4–732 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–457]

Duke Power Company; Notice of Availability of Environmental Assessment

March 23, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (19 CFR Part 380), Commission staff have prepared an environmental assessment (EA) that analyzes the environmental impacts of allowing Duke Power Company, licensee for the Catawba-Wateree Hydroelectric Project, to grant an updated Water Withdrawal Easement to the City of Mount Holly, North Carolina for project property within Mountain Island Lake that will supercede an existing easement. The updated easement will allow Mount Holly to install and maintain new intake screens on existing water intake pipes at its Raw Water Intake Pumping Station at Mountain Island Lake, and allow Mount Holly to increase water withdrawals from the currently-permitted rate of 3.0 million gallons per day (MGD) to maximum of 13.5 MGD. Increases in water withdrawal would occur incrementally over time. The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the Proposed Action would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Approving Non-Project Use of Project Lands and Waters,'' which was issued March 23, 2004, and is available for review and reproduction at the Commission' Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (prefaced by P-) and excluding the last thee digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–733 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–001]

SAF Hydroelectric, LLC; Notice of Application Accepted for Filing; Soliciting Comments, Motions To Intervene And Protests

March 26, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Original Major License.

b. *Project No.:* 12451–001.

c. *Date filed:* January 20, 2004.

d. *Applicant:* SAF Hydroelectric, LLC.

e. *Name of Project:* Lower St. Anthony Falls Hydroelectric Project.

f. *Location:* On the Mississippi River, in the Town of Minneapolis, Hennepin County, Minnesota. The project affects federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Douglas A. Spaulding P.E., Spaulding Consultants, 1433 Utica Avenue South, Suite 162, Minneapolis, MN 55416, (952) 544–8133 or Robert Larson, 33 South 6th Street, Minneapolis, MN 55402, (612) 343–2913.

i. *FERC Contact:* Kim Carter at (202) 502–6486, or *kim.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, Motions to Intervene and Protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

k. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. This application is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed Lower St. Anthony Falls Hydroelectric Project would be located at the U.S. Army Corps of Engineers (Corps) Lower St. Anthony Falls Lock and Dam and would utilize 5.9 acres of Corps lands. The generation turbines would be located in an auxiliary lock chamber adjacent to the Corp's main lock chamber. An auxiliary building, storage yard, and buried transmission line would occupy additional Corps lands. The project would operate according to the Corp's present operating criteria, which maintains a constant water surface elevation of

approximately 750.0 m.s.l. in the 33.5-acre reservoir.

The proposed project would consist of the following features: (1) 16 turbine/generator units grouped in eight steel modules 6.2-foot-wide by 12.76 feet high having a total installed capacity of 8,980 kilowatts, each module contains 2 turbine/generator sets (two horizontal rows of 1 unit each) installed in eight stoplog slots on the auxiliary lock structure; (2) trashracks located at the turbine intake; (3) a 200-foot-long sheet pile/concrete guide wall, located between the main lock and auxiliary lock, to facilitate navigation; (4) a 1,050-foot-long, 13,800-volt buried transmission line; (3) a 21-foot by 81-foot control building to house switchgear and controls; (4) a 20-foot by 30-foot project office and storage building; and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be about 57,434,000 kilowatt-hours.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item h above.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', or ''COMPETING APPLICATION''; (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 protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–728 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 26, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12489–000.

c. *Date filed:* February 19, 2004.

d. *Applicant:* Ace Wild Farm and Ranch.

e. *Name of Project:* Parkers Forge Pond Hydroelectric Project.

f. *Location:* On the Winnetuxet River, in Plympton County, Massachusetts, utilizing the Parkers Forge Pond Dam owned by the Town of Plympton, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Patricia Renee Pina, President, Aces Wild Farm and Ranch, 59 Parsonage Road, Plympton, MA 02367, (781) 585–3243.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing 13-foot-high 150-long rockfill dam; (2) a pond with a normal maximum elevation of 89.95 feet above sea level and a surface area of 5 acres; (3) a powerhouse containing two new generating units having a total installed capacity of 5 megawatts; (4) an existing concrete pad tailrace; (5) a new 13.8-kilovolt 1,600-foot-long transmission line. Applicant estimates that the average annual generation would be 26 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any paper filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–729 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 26, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12490–000.

c. *Date filed:* March 1, 2004.

d. *Applicant:* City of Grafton, West Virginia.

e. *Name of Project:* Tygart Dam Hydroelectric Project.

f. *Location:* On Tygart River, in Taylor County, West Virginia, utilizing a federal Dam administered by the U.S. Army Corps of Engineers (Corps).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mayor Jeffrey Tansill, 1 West Main Street, Grafton, WV 26354, (304) 265–1412.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing Corps Tygart Dam and would consist of: (1) An intake structure; (2) a 460-foot-long, 15-foot-diameter steel penstock; (3) a powerhouse containing two generating units having a total installed capacity of 20 megawatts; (4) a tailrace; (5) a 6,700-foot-long, 138-kilovolt transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 117 gigawatt-hours and project energy would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any paper filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comment*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–730 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

South Carolina Public Service Authority; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

March 26, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 199–205.

c. *Date Filed:* March 15, 2004.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee Cooper Hydroelectric Project.

f. *Location:* On the Santee and Cooper Rivers in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter counties, near Moncks Corner, South Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John Dulude, South Carolina Public Service Authority, One Riverwood Plaza, P.O. Box 2946101, Moncks Corner, SC 29461–2901, (843) 761.4046.

i. *FERC Contact:* Ronald McKitrick, (770) 452.3778 or *ronald.mckitrick@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 14, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Santee Cooper Project consists of the Santee Development: (1) Hydraulic fill 4.4 mile long, 50 foot high North Dam (2) homogeneous rolled, 2.8 mile long, 48 foot high South Dam (3) 3,358 foot spillway, powerhouse with the installed capacity of 1.92 MW; the Cooper Development (4) earthfill, 3,700 foot long, 60 foot high East Dam, (5) earthfill, 6,000 foot long, 78 foot high West Dam, (6) uncompacted fill, 29.8 mile long, 25 foot high, east, west, north dikes, (7) powerhouse with the installed capacity of 132.62 MW, and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 106, 530 megawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the *South Carolina STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—July 2004
Issue Acceptance Letter—October 2004
Issue Scoping Document 1 for comments—January 2005
Request Additional Information—March 2005
Issue Scoping Document 2—April 2005
Notice of application is ready for environmental analysis—May 2005
Notice of the availability of the EA—November 2005
Ready for Commission's decision on the application—February 2006

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–731 Filed 3–31–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[Rate Order No. WAPA–112]

Desert Southwest Customer Service Region

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order extending network integration transmission and ancillary service rates.

SUMMARY: This action is to extend the existing Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1 for the Desert Southwest Customer Service Region network integration transmission services for the Parker-Davis Project and the Pacific Northwest-Pacific Southwest Intertie Project and ancillary services for the Western Area Lower Colorado control area through March 31, 2005. The additional time is needed to accommodate changes in the firm transmission rate due to the upcoming Multi-System Transmission Rate (MSTR) Public Process.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. The existing rates contained within Rate Order No. WAPA–84 were approved for a 5-year period, beginning April 1, 1999, and ending March 31, 2004.

Western is currently evaluating methodologies and preparing to enter into a public process proposing an MSTR for cost recovery purposes for the Parker-Davis Project, the Pacific Northwest-Pacific Southwest Intertie Project and the Central Arizona Project. The methodologies to charge for the network integration transmission service are currently written to apply to each Project. Through the public process, these service methodologies will be changed to accommodate some variation of the proposed MSTR. Western believes that the additional time afforded by extending the date for the expiration of the network integration transmission and ancillary services will allow Western to develop new rates to facilitate cost recovery in the future. In order to conduct the planned MSTR public process, the current Rate Schedules must be extended pursuant to 10 CFR 903. The rate schedules covered by Rate Order No. WAPA–84 will be extended under Rate Order No. WAPA–112.

Western's existing formulary rate schedules for network integration transmission and ancillary services, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through March 31, 2005.

Following review of Western's proposal within the DOE, I approve Rate Order No. WAPA–112, which extends the existing Network Integration Transmission and Ancillary Service Rates through March 31, 2005.

Dated: March 22, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming and Approving an Extension of the Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Service Rates

These service rate methodologies were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. This rate extension is issued following the Delegation Order and the DOE rate extension procedures at 10 CFR 903.23(b).

Background

The existing rates contained within Rate Order No. WAPA–84 were approved for 5 years, beginning April 1, 1999, and ending March 31, 2004.

Discussion

Western is currently evaluating methodologies and preparing to enter into a public process proposing a Multi-System Transmission Rate (MSTR) for cost recovery purposes for the Parker-Davis Project, the Pacific Northwest-Pacific Southwest Intertie Project, and the Central Arizona Project. The methodology to charge for the network integration transmission service is currently written to apply to each Project. Through the public process, the service methodology may be changed to accommodate the proposed MSTR. Western believes that the additional time afforded by extending the date for the expiration of the network integration transmission and ancillary services will allow Western to develop these rates to facilitate cost recovery.

Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR 903. Upon its approval, Rate Order No. WAPA–84 will be extended under Rate Order No. WAPA–112.

Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Ancillary Service Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, and the existing network integration transmission rate schedules PD–NTS1, and INT–NTS1. These existing Rate Schedules shall remain in effect through March 31, 2005.

Dated: March 22, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 04–7327 Filed 3–31–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. RCRA–2001–0032; FRL–7642–1]

Announcement of a Public Meeting on Development and Implementation of Electronic Manifests To Accompany Hazardous Waste Shipments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA's Office of Solid Waste is holding a two-day public meeting on May 19–20, 2004, to discuss and obtain public input on a national electronic manifest (''e-manifest'') system. Specifically, the purpose of this meeting is to present our rulemaking progress to date and to solicit input and preferences from stakeholders and other interested persons on the development and implementation of the e-manifest, as well as on alternative information technology (IT) systems. Interested parties are encouraged to attend the meeting and participate actively in these discussions. An agenda is provided in section III of this notice; this agenda may change as the Agency continues to identify topics that may be of interest. The meeting will consist of a plenary session supplemented by concurrent breakout sessions. The meeting structure will be governed by four main areas of e-manifest system development:

(1) Business processes and functionalities or ''work flow;'

(2) Governance implications (management, maintenance);

(3) IT system architecture and implications; and,

(4) Funding sources and mechanisms for deploying such a system.

The Agency's primary objective is to collect creative feedback from stakeholders on the merits of different approaches to establishing an electronic manifest system capability. In order to meet the goals of the meeting, we encourage meeting participants from a variety of professional backgrounds to attend, such as IT vendors, state governmental and IT staff, and hazardous waste handlers (generators, transporters, waste management firms). Based on the input received at this meeting, from comments received, and from our own internal discussions, the Agency will decide whether to proceed with an e-manifest rule, and if so, how it should be designed and implemented. If the Agency decides to proceed with such a rule, the Agency will re-propose and solicit additional comments before any final decisions/rules are promulgated.

DATES: The stakeholder meeting is scheduled for May 19–20, 2004.

ADDRESSES: EPA will hold the meeting in Washington, DC, at our EPA East Public Hearing Room, with nearby meeting rooms also being used for the breakout sessions. The Public Hearing Room is located at Room 1153 EPA East, 1201 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rachel White, Office of Solid Waste, telephone: (703) 306–0023; fax: (703) 308–0514; e-mail: *white.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Meeting Apply to Me?

While the meeting is open to the public in general, the identified topics may be of particular interest to persons who use the RCRA Uniform Manifest, persons who are interested in developing IT solutions to implement an electronic manifest system, or persons who are concerned about the implementation of RCRA in these settings. Potentially interested parties may include but are not limited to: hazardous waste generators; hazardous waste treatment, storage and disposal facilities (TSDFs); hazardous waste transporters; Federal, State and local environmental and transportation regulators; enforcement personnel; IT vendors interested in hazardous waste

applications and products; non-governmental organizations; and trade associations dealing with hazardous waste transportation issues. People with specific technical expertise, such as computer system specialists, information officers, IT managers and others are encouraged to attend. If you have any questions regarding the applicability of this meeting to a particular entity, organization or occupational discipline, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How May I Participate in This Meeting?

For security purposes, all persons wishing to attend the meeting must register in advance no later than May 12, 2004 with the contact person listed above or online at: *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/e-man.htm.* Access to the meeting for non-registered attendees may be denied by EPA building security or by limited seating capacity. When registering, please provide your name, affiliation, mailing address, telephone number, and e-mail address if you have one. A valid photo ID will be required to gain access to the EPA meeting rooms. Any person needing special accessibility accommodations at this meeting should inform the contact person above when registering.

C. May I Submit Comments on This Meeting?

We are not accepting comments prior to the stakeholder meeting, because we believe that participation in the meeting itself is critical to understanding the various approaches on which we are seeking feedback. However, if you wish to bring materials to the meeting for submission to the public record, we will include them in the official meeting proceedings package, which will be submitted to the docket following the meeting. In addition, meeting participants may also submit their written comments to the docket following the stakeholder meeting; participants will have 30 days after the meeting to submit their comments to the EPA Docket (Docket ID No. RCRA 2001–0032) that we created for the May 2001 Notice of Proposed Rulemaking (NPRM), which can be found at *http:/www.epa.gov/edocket.* Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at 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) 566–1742, and the telephone number for the EPA Docket Center is (202) 566–0270. In addition to providing a written summary of the meeting, we will submit contributed discussion materials to EDOCKET a few weeks after the meeting. We also will enter the proceedings from this meeting into EDOCKET (Docket ID No. RCRA 2001–0032).

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in EDOCKET. 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. Publicly available docket materials that are not available electronically may be viewed at the docket facility identified in Unit I.C.

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.

D. How and To Whom Do I Submit Comments After the Meeting?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

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

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 EDOCKET at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2001–0032. 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. Electronic comments may also be sent

through the Federal wide eRulemaking Web site at *www.regulations.gov.*

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2001–0032. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Send your comments to: EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2001–0032.

3. *By Hand Delivery or Courier.* Deliver your comments to: OSWER Docket, Environmental Protection Agency, EPA West, 1301 Constitution Ave, NW., Room B102, Washington, DC, Attention Docket ID No. RCRA–2001–0032. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit 1.C.

II. Background

For more than 20 years, the hazardous waste manifest system has provided a paper trail to track hazardous waste shipments from ''cradle to grave.'' Waste generators, transporters, and treatment, storage and disposal facilities (TSDFs) each participate in documenting the movement of waste shipments through the use of the current paper manifest system. About 28 states currently collect completed manifest copies from hazardous waste generators and TSDFs, manually keying or scanning the data into state tracking databases. These states utilize manifest data for program management, for identifying trends in waste management, for enforcement and for assessing waste management fees.

Because of the volume of manifests circulated each year (our 2002 estimates range between 2.5 million and 5 million), and the number of copies that must be signed sequentially and retained in files for inspection, the paperwork burden attributed to the manifest system is among the largest that results from current EPA-required data collections. We estimate that the current paper-based system results in annual costs to waste handlers and states of between $193 million and $404 million. Thus, for several years, EPA has sought to transform the manifest system from its current paper-based approach to one that takes greater advantage of electronic information technologies. We believe that successful implementation of an e-manifest system could substantially reduce the costs and paperwork burden associated with the current manifest system, while improving the ability to track waste shipments and improving the quality and timeliness of manifest data.

In May 2001, EPA published an NPRM which included proposed changes that would standardize the manifest form, and which proposed standards that would enable manifests to be completed, signed and transmitted electronically (*See* 66 FR 28240, *http://www.epa.gov/fedrgstr/EPA-WASTE/2001/May/Day-22/f11909.htm*). Specific to the e-manifest, we proposed alternative IT approaches involving: (1) Standardized data exchange format using XML schema and style sheet and Electronic Data Interchange (EDI) formats; (2) digital and digitized electronic signatures; and, (3) computer security requirements aimed at ensuring data integrity, authentication and non-repudiation. The proposed approach assumed that EPA's role would be limited to setting the e-manifest system standards, while actual e-manifest systems would be deployed by private parties, including waste firms and IT vendors wishing to establish and market this type of product or service. This assumption was based on EPA's desire to maintain its current policy role vis a vis the manifest.

However, public comments on the proposed rule indicated diverse and substantial levels of support for an e-manifest system, but cast doubt on the viability of EPA's assumption that waste handlers or others would develop and broadly deploy low-cost, interoperable systems. Commenters from the waste management sector indicated that these private systems could be costly, duplicative and possibly inconsistent with one another. Additionally, the rigor and prescriptiveness of the technical and security standards we proposed as necessary to support a decentralized or distributed e-manifest approach raised questions for commenters about the feasibility of going forward with this approach. As a result, EPA decided to defer final action on the e-manifest portion of the May 2001 proposed rule. Instead, we conducted additional analyses related to the e-manifest and decided to look more closely at alternatives to our proposed approach. Several commenters, for example, expressed the view that a national, web-based system hosted by EPA would be a much more practical and workable solution to the e-manifest work flow. However, this would require EPA to assume a more centralized manifest collection role that it does not now play with respect to the paper manifest, and it would involve substantial start-up and maintenance costs for which EPA would need to identify stable sources of funding. This alternative approach also raises the question whether EPA is the party best suited to develop a consistent, national solution or whether other parties might more appropriately develop and host such a system.

Given this background, the purpose of this meeting is to engage interested stakeholders in a two-day public idea exchange aimed at helping us identify how best to proceed with selecting and implementing the future direction of the e-manifest, if the Agency decides to proceed with such a rulemaking. We plan to structure and conduct the meeting to reach our objectives of receiving broad, rigorous input and assessment of alternative design and implementation approaches to a national e-manifest system and, where possible, identify if there is public support for the key components of such a system. Additional background information about the May 2001 proposed rule, including the proposed electronic manifest approach, is available at: *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/mods.htm.* General background information about the hazardous waste manifest system is available at: *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/index.htm.*

III. Agenda

The two-day stakeholder meeting will consist of a plenary session supplemented by concurrent breakout sessions. As the meeting date approaches, we will post more detailed information on the meeting agenda and discussion materials on EPA's Web site at *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/e-man.htm.* Generally, the agenda will focus discussion in four key areas:

1. E-Manifest Business Process: This discussion will focus on the e-manifest business process flow, addressing existing requirements and new opportunities (potential roles and functions) of the various types, locations and sizes of stakeholders involved in

each step of the RCRA manifest process and their geographic or other dependencies. The e-manifest could serve as a mechanism for consolidating a number of functions currently performed by hazardous waste generators, transporters, TSDFs, State regulators, enforcement personnel and Federal regulators. For example, reporting requirements for the RCRA Biennial Report and other data collection programs could be incorporated into one function through the e-manifest which, if implemented under a ''shared IT services'' approach, would allow for integrated reporting and faster data collection and analysis. Stakeholders include, but are not limited to, hazardous waste generators, transporters and TSDFs, as well as State government environmental agencies, international organizations, IT vendors, hazardous waste brokers, and various Federal agencies such as U.S. Customs and the Department of Justice.

2. E-Manifest Information Technology Architecture: This discussion will focus on the information technology (IT) and other technical aspects of different e-manifest system approaches (*i.e.*, software and hardware architectures). Within this area, four main IT subsystems will be explored:

- E-manifest data subsystem: key assumptions, questions and issues to be resolved related to manifest data (*e.g.*, input, transfer, output, storage, archive).
- E-manifest system services subsystem: key components of the IT application architecture and how they interrelate (*i.e.*, interoperability), as well as defining discrete transactions that comprise the entire process.
- E-manifest data security subsystem: how manifest data and IT applications will be kept secure.
- E-manifest infrastructure subsystem: how data and IT applications will be managed (maintained, updated).

3. E-Manifest Governance: This discussion area supplements the business process discussion, addressing the major issues associated with who will design, implement, manage, maintain, certify and approve e-manifest system IT software, hardware, guidance, administrative processes, modifications, upgrades, interfaces and technical formats. We are interested in assessing institutional arrangements for governance of the e-manifest system, paying attention to their benefits and costs (trade-offs). For purpose of this meeting discussion, we have identified two fundamentally different approaches, which we refer to as ''shared services'' and ''distributed services.'' The ''distributed services'' approach, under which private firms develop e-manifest systems that adhere to a set of promulgated standards, was proposed in the May 2001 proposed rule.

Another approach we have identified calls for a ''shared services'' system in which EPA or some other entity establishes an e-manifest system that is accessed through a shared central portal. This would mean that the entire manifest work flow would be hosted by EPA or another entity on a Web-based system.

4. E-Manifest Funding Approaches: This discussion will identify alternative funding approaches for both system start-up and annual life-cycle maintenance costs that may be needed to implement any ''shared services'' type of system. Clearly, EPA will not be able to move forward with any ''shared services'' approach involving our developing and hosting new applications or systems unless we are able to identify a stable source of funding for the entire life cycle of such a system. During this discussion, the Agency will present materials describing a variety of possible funding mechanisms (*e.g.*, user fees, share-in-savings and other cost-recovery contracts, new Federal appropriations earmarked for system development, and reallocation/earmarking of EPA State grants), and discuss how such funding mechanisms might be suited for system development or for operating and maintenance costs. We will seek from our stakeholders their creative ideas, suggestions, and feedback on these funding mechanisms, as well as any additional mechanisms suggested by stakeholders during the meeting.

Based on the information received at this meeting, from public comments, and our own internal discussions, the Agency will decide whether to proceed with an e-manifest rule, and if so, how it should be designed and implemented. Again, if the Agency decides to proceed with such a rule, the Agency will re-propose and solicit additional comment before we proceed with any final decisions.

Dated: March 12, 2004.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 04–7329 Filed 3–31–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7642–3]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in his capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

The Committees are meeting to review and comment on the deliverables for the Commission for Environmental Cooperation June Council Session and the Ten-Year Review of the North American Agreement on Environmental Cooperation.

DATES: The Committees will meet on Thursday, Apri 29, 2004 from 9 a.m. to 6 p.m., and on Friday, April 30, 2004 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Washington Hilton and Towers, 1919 Connecticut Ave., NW.,

Washington, DC 20009. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 23, 2004.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 04–7331 Filed 3–31–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7642–4]

EPA Public Meeting: Market Enhancement Opportunities for Water-Efficient Products; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is hosting a two-day public meeting to discuss market enhancement opportunities for water-efficient products. EPA's goal is to bring together stakeholders from Federal, state and local governments; utilities; manufacturers; building trade associations; consumer groups; and other interested parties to exchange information and views on promoting water-efficient products in the marketplace. The focus of this meeting will be on indoor residential, commercial, and industrial products. The first meeting, held in Washington, DC on October 9, 2003, served to initiate our process and gain reactions from a broad range of stakeholders. A second meeting was held in Austin, TX on January 15, 2004, and focused on the roles of water utilities; state, local, and regional governments; and non-governmental organizations. The third meeting, held in Phoenix, AZ on February 17, 2004, focused on urban landscape irrigation.

The meeting will consist of several panel discussions, and is open to the public. The audience will have opportunities to ask questions and provide comments.

DATES: The meeting will be held on April 13, 2004 (8:30 am–5 pm), and April 14, 2004 (8:30 am–12 noon).

ADDRESSES: The meeting will be held at the Renaissance Hotel, 515 Madison St., Seattle, WA 98104.

FOR FURTHER INFORMATION CONTACT: For more information on this meeting, including an agenda, please see EPA's Water-Efficient Products Market Enhancement Program Web page at *http://www.epa.gov/owm/water-efficiency/products_program.htm.* To register online from the Water-Efficient Products Market Enhancement Program page, click on the ''Register for Meetings and View Agendas'' link. You may also register by contacting ERG, Inc. by phone (781–674–7374), or by downloading the registration form and sending the completed form to ERG via fax at 781–674–2906 or mail to ERG, Conference Registration, 110 Hartwell Avenue, Lexington, MA 02421–3136. Seating is limited, therefore please register or request special accommodations no later than April 5, 2004.

Dated: March 25, 2004.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 04–7330 Filed 3–31–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 22, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 3, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local and tribal government.

Number of Respondents: 52.

Estimated Time Per Response: 3–5 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 162 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254(e). In the Order on Remand, in CC Docket No. 96–45, FCC 03–249, the Commission modified the high-cost universal service support mechanism for non-rural carriers and adopted measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

OMB Control No.: 3060–0950.

Title: Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99–266.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 1,313.

Estimated Time Per Response: 10–180 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 262,600 hours.

Total Annual Cost: $47,268,000.

Needs and Uses: The Commission adopted a Second Report and Order in WT Docket No. 99–266, which extended the time period during which winning bidders can negotiate with relevant federally-recognized tribes to obtain the certification needed to obtain the bidding credit in a particular market from 90 days to 180 days. Further, the Second Report and Order clarified various administrative matters involved in implementing the bidding credit. The Commission believes that the lack of basic telecommunications services puts affected tribal communities at a social and economic disadvantage. This information will be used to ensure that tribal communities within federally-recognized tribal areas have access to wireless telecommunications services equivalent to that of the nation.

OMB Control No.: 3060–0999.

Title: Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 965 respondents; 1,930 responses.

Estimated Time Per Response: 2–4 hours.

Frequency of Response: Annual, semi-annual, biennial reporting requirements and third party disclosure requirements.

Total Annual Burden: 16,299 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission modified the exemption of public mobile service phones from the requirements of the Hearing Aid Compatibility Act of 1988. The Report and Order in WT Docket No. 01–309, FCC 03–168, requires digital wireless phone manufacturers and service providers to make available a certain number of digital wireless phones that meet specific performance levels set forth in an established technical standard. The phones must be made available according to an implementation schedule specified in the Order. To monitor the progress of digital phone manufacturers and service providers must submit reports every six months during the first three years of implementation, and then annually thereafter through the fifth year of implementation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7374 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 19, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before June 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0291.

Title: Sections 90.477(a), (b)(2), and (d)(2), Interconnected Systems.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 12,509.

Estimated Time per Response: .25 hours for 12,405 responses and 2 hrs. for 104 responses.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 3,309 hours.

Total Annual Cost: N/A.

Needs and Uses: This rule section allows commercial and private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station file and made available to participants in the sharing arrangement and the Commission upon request.

OMB Control Number: 3060–0949.

Title: Wireless, Cellular and Mobile Service Provider Worksheet.

Form No.: FCC Form 159–W.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 4,150.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 1,038 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 9 of the Communications Act of 1934, as amended, authorized the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Common carrier licensees and permittees who provide interstate telephone operator services must pay those fees. These regulatory fees are based upon a percentage of the carrier's interstate revenues. The information is necessary to determine how much each carrier's interstate revenues are available to the carrier by extraction from another OMB collection, Telecommunications Reporting Worksheet, FCC Form 499–A (OMB Control Number 3060–0855). The

requested FCC Form 159–W is intended to provide a convenient format for documenting the extracted interstate revenue information (which is already populated on the form) and complete/verify the simple calculation of the fee amount due. The information will be used by the Commission to determine if a party has properly calculated the amount if it's regulatory fee due. The Commission is revising this information collection to expand the scope of respondents, *i.e.,* wireless, cellular and mobile service providers. Only the necessary fee information will be populated on the FCC 159–W as it pertains to the particular service provider. The service providers will be requested to verify the data or correct it.

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Nos.: FCC Forms 507, 508 and 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,300 respondents, 7,071 responses.

Estimated Time per Response: 1–6 hours.

Frequency of Response: Annual reporting requirement and third party disclosure reporting requirement.

Total Annual Burden: 30,659 hours.

Total Annual Cost: $45,000.

Needs and Uses: The Commission modified the reporting requirements associated with the Interstate Common Line Support mechanism in order to reduce the burdens associated with the requirements and increase the accuracy of data reported. The Commission will use the information collected to determine whether and to what extent non-price cap or rate-of-return carriers providing the data are eligible to receive universal service support. The Commission will use the tariff data to make sure that rates are just and reasonable, as required by section 201(b) of the Act.

OMB Control Number: 3060–0978.

Title: Compatibility with E911 Emergency Calling Systems, Fourth Report and Order.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000 respondents, 16,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Quarterly reporting requirement.

Total Annual Burden: 32,000 hours.

Total Annual Cost: N/A.

Needs and Uses: This collection of information is needed to ensure persons with hearing and speech disabilities using text telephone (TTY) devices will be able to make 911 emergency calls over digital wireless systems. The Commission will use the information in the quarterly TTY reports to keep track of the carriers' progress in complying with E911 TTY requirements and also to monitor the progress technology is making towards compatibility with TTY devices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7375 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 23, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information less it displays a currently valid 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 that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report, FCC Form 398.

Form Number: FCC 398.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,950 respondents; 7,800 responses.

Estimated Hour per Response: 6 hours per quarter.

Frequency of Response: Recordkeeping; quarterly reporting requirement.

Total Annual Burden: 46,800 hours.

Total Annual Cost: $996,000.

Privacy Impact Assessment: No.

Needs and Uses: Licenses use FCC Form 398 to identify the individual station and children's educational and informational programs, which the station broadcasts on both the regularly scheduled and preempted core programming, to meet the station's obligation under the Children's Television Act of 1990. This standardized form provides a consistent format for reporting by all licensees, which facilitates efforts by the public and the FCC to monitor compliance with the Children's Television Act.

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues, CS Docket Nos. 00–96 and 99–363.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 900.

Estimated Hours per Response: 1 to 5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,700.

Total Annual Costs: $90,000.

Privacy Impact Assessment: No.

Needs and Uses: Congress directed the Commission to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information not only informs the public of the method of broadcast signal carriage, but also local broadcast stations the data necessary to assert their carriage rights within their local markets.

OMB Control Number: 3060–1050.

Title: New Allocation for Amateur Radio Service, ET Docket No. 02–230.

Type of Review: Extension of a currently approved collection.

Form Number: N/A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 20 mins. (0.3 hours).

Frequency of Response: Recordkeeping; on occasion reporting requirements; third party disclosure.

Total Annual Burden: 150 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No.

Needs and Uses: On April 29, 2003, the Office of Engineering and Technology adopted a Report and Order, *Amendment of Parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service,* ET Docket No. 02–98, FCC 03–105. An amateur operator holding a General, Advanced or Amateur Extra Class license may only operate on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5404 kHz. Under the following limitations: (1) A maximum effective radiated power (e.r.p.) of 50 W; and (2) single sideband suppressed carrier modulation (emission designator 2K8J3E), upper sideband voice transmissions only. For the purpose of computing e.r.p. the transmitter PEP will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7378 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 24, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before June 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form No.: FCC Form 485.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal government, and State, local or tribal government.

Number of Respondents: 91.

Estimated Time per Response: .50 hours–8 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, and on occasion reporting requirement.

Total Annual Burden: 1,388 hours.

Total Annual Cost: 1,055,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Sections 206–209 of the Communications Act of 1934, as amended (the ''Act''), provide the statutory framework for the Commission's rules for resolving formal complaints against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) specifically states that ''it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' In 1988, Congress added subsection 208(b) to require that any complaint filed with the Commission concerning the lawfulness of a common carrier's charges, practices, classifications or regulations must be resolved by the Commission in a final, appealable order within 12 months from the date filed, or 15 months from the date filed if ''the investigation raises questions of fact of * * * extraordinary complexity.''

This collection of information includes the process for submitting a formal complaint. The information is used by the Commission to determine the sufficiency of complaints and to resolve the merits of disputes between the parties. The Accelerated Docket process expedites the processing of certain complaints. If the information is not collected, the Commission will be unable to resolve certain common carrier-related complaint proceedings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7379 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 25, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 3, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit

Number of Respondents: 1,650 respondents; 3,603 responses.

Estimated Time Per Response: 1–6,056 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 148,053 hours.

Total Annual Cost: $16,162,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: On March 4, 2004, the Commission released a Notice of Proposed Rulemaking (NPRM), IB Docket No. 04–47, FCC 04–40. The Commission is seeking comment from the public on several potential changes to its international section 214 authorization process and the rules relating to the provision of the United States (U.S.)-international telecommunications services. Specifically, the Commission seeks comment on the following subjects: (1) Discontinuance of international service; (2) international 214 authorizations for CMRS carriers; (3) international roaming; (4) commonly-controlled subsidiaries; (5) modification of cable land license rules; and (6) other rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7380 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 04–75; DA 04–747]

Comment Sought on ''Request for Expedited Declaratory Ruling'' Concerning the Territorial Exclusivity Rule

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comment on a ''Request for Expedited Declaratory Ruling'' submitted by Max Media of Montana LLC. Max Media contends that the NBC television network and Sunbelt Communications Company and companies it controls have an agreement under which NBC will not renew its current NBC affiliation with Max Media's KTGF–TV in Great Falls, Montana, when that affiliation agreement expires in 2005. Max Media contends that the alleged agreement constitutes an arrangement between Sunbelt and a network organization (*i.e.*, NBC) with regard to Sunbelt's stations in communities other than Great Falls, Montana, which ''prevents or hinders another broadcast station located in a different community (*i.e.*, Max Media's station in Great Falls) from broadcasting any program of the network organization,'' in violation of the Commission's ''territorial exclusivity'' rule. Max Media requests an expedited declaratory ruling in order to terminate this controversy and to resolve a dispute concerning the territorial exclusivity rule. This proceeding will be governed by permit-but-disclose ex parte procedures that are applicable to nonrestricted proceedings.

DATES: Comments are due on or before April 28, 2004. Reply comments are due on or before May 10, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Jane Gross, Policy Division, Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* MB Docket No. 04–75, released March 19, 2004. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from 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 at *qualexint@aol.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Synopsis

On February 25, 2004, Max Media of Montana LLC (''Max Media'') filed a ''Request for Expedited Declaratory Ruling'' (''Request''). The Request seeks

a Commission ruling concerning section 73.658(b) of the Commission's Rules (47 CFR 73.658(b)), the ''territorial exclusivity'' rule. The territorial exclusivity rule, in part, provides that, ''No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization * * * which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization.''

Max Media contends that the NBC television network and Sunbelt Communications Company and companies it controls (''Sunbelt'') have an agreement under which NBC will not renew its current NBC affiliation with Max Media's KTGF–TV in Great Falls, Montana, when that affiliation agreement expires in 2005. Under this arrangement, Max Media alleges, NBC will, instead, give the affiliation to Sunbelt, which has NBC-affiliated stations in nearby communities. Sunbelt does not have a station licensed to Great Falls, Montana, but would allegedly provide coverage of Great Falls using stations it controls in nearby communities and through booster, translator and low-power television stations that it has applied for in Great Falls. Max Media has filed pleadings in opposition to those license applications.

Max Media contends that the alleged agreement constitutes an arrangement between Sunbelt and a network organization (*i.e.*, NBC) with regard to Sunbelt's stations in communities other than Great Falls, Montana, which ''prevents or hinders another broadcast station located in a different community (*i.e.*, Max Media's station in Great Falls) from broadcasting any program of the network organization,'' in violation of the territorial exclusivity rule. It requests an expedited declaratory ruling pursuant to § 1.2 of the Commission's rules, 47 CFR 1.2, and section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), in order to terminate this controversy and to resolve a dispute concerning the territorial exclusivity rule.

On March 10, 2004, Sunbelt filed an ''Opposition of Sunbelt Communications Company to Request for Expedited Declaratory Ruling'' (''Opposition''). In the Opposition, Sunbelt asserts that a declaratory ruling is inappropriate in this case because there is no controversy to terminate or uncertainty to remove. Additionally, it asserts that there is no merit to Max Media's complaint that the territorial exclusivity rule is being violated by Sunbelt or NBC. Rather, it contends, all that is present in this matter is the exercise of normal business judgments by the parties.

We invite comment on the Max Media petition.

Ex parte status: In order to permit a full exchange of views on the issues raised in the Request, and Max Media's indication that it is seeking a declaratory ruling rather than specific enforcement action, we have concluded that the public interest would be served by classifying this proceeding, as well as the related pending application proceedings, as permit-but-disclose under the ex parte rules notwithstanding the existence of related applications and oppositions. Accordingly, by the Public Notice, and pursuant to § 1.1200(a) of the Commission's Rules, 47 CFR 1.1200(a), we announce that these proceedings will be governed by permit-but-disclose ex parte procedures that are applicable to nonrestricted proceedings under section 1.1206 of the Commission's rules, 47 CFR 1.1206.

Permit-but-disclose ex parte procedures permit interested parties to make ex parte presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written ex parte presentation to the Commissioners or Commission employees must file the written presentation with the Commission, as set forth below, no later than the next business day after the presentation. 47 CFR 1.1206(b)(1). Persons making oral ex parte presentations must file a summary of the presentation, as set forth below, and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. 47 CFR 1.1206(b)(2). All ex parte filings must be clearly labeled as such and must reference the Public Notice, DA 04–747, as well as any other applicable docket or file numbers.

Comments must be filed on or before April 28, 2004; and reply comments must be filed on or before May 10, 2004. Comments and reply comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies (an original and four copies). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings 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, Natek, 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. In addition, parties should serve one copy of each filing via e-mail, or five paper copies, on Jane Gross, *Jane.Gross@fcc.gov,* Federal Communications Commission, Media Bureau, Policy Division, 445 12th Street, SW., 3–A832, Washington, DC 20554.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Media Bureau.

[FR Doc. 04–7373 Filed 3–31–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Alliance Bancshares, Inc., Cape Girardeau, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Alliance Bank, Cape Girardeau, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First Financial Bancshares, Inc., Abilene, Texas; to acquire 100 percent of the voting shares of Liberty National Bank, Granbury, Texas.

Board of Governors of the Federal Reserve System, March 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7279 Filed 3–31–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Correction

This notice corrects a notice (FR Doc. 04-7278) published on page 16541 of the issue for March 30, 2004.

The entry for the Sunshine Act Meeting Notice for April 5, 2004, is revised to read as follows:

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, April 5, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7525 Filed 3–30–04; 2:46 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Workshop: Monitoring Software on Your PC: Spyware, Adware, and Other Software

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of Public Comment Period Until May 21, 2004.

SUMMARY: The FTC announces that the time period during which persons may submit written comments on the issues to be addressed by the public workshop has been extended.

DATES: Comments must be received by May 21, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Spyware Workshop—Comment, P044509,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *spywareworkshop2004@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly Thomas, 202–326–2938, Dean Forbes, 202–326–2831, or David Koehler, 202–326–3627, Division of Advertising Practices, Federal Trade Commission. The above staff can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To read the Commission's policy on how it handles the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

SUPPLEMENTARY INFORMATION:

Background on Workshop Goals

On April 19, 2004, the FTC is planning to host a public workshop, ''Monitoring Software on Your PC: Spyware, Adware, and Other Software,'' to explore the issues associated with the distribution and effects of software that aids in gathering information about a person or organization without their knowledge and which may send such information to another entity without the consumer's consent, or asserts control over a computer without the consumer's knowledge. Questions to be addressed at the workshops are set forth in the Commission's Notice Announcing Public Workshop and Requesting Public Comment, published in the **Federal Register** on February 24, 2004.

Form and Availability of Comments

The time period during which public comments may be submitted has been extended. Interested parties may submit written comments on the questions and issues addressed by the workshop until May 21, 2004. Especially useful are any studies, surveys, research, and empirical data. Comments should refer to ''Spyware Workshop—Comment, P044509,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and

should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *spywareworkshop2004@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/comments/spyware/index.html.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Donald S. Clark,

Secretary.

[FR Doc. 04–7257 Filed 3–31–04; 8:45 am]

BILLING CODE 6750–01–M

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0208]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Applicant Background Survey;

Form/OMB No.: OS–0990–0208;

Use: This form will be used to ask applicants for employment how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities, in compliance with EEOC management directives.

Frequency: Reporting;

Affected Public: Individuals or Households;

Annual Number of Respondents: 30,000;

Total Annual Responses: 30,000;

Average Burden Per Response: 2 minutes;

Total Annual Hours: 1,000;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0208), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: March 23, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–7363 Filed 3–31–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–28–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

2004 American Indian Adult Tobacco Survey Pilot Test—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to test and pilot a culturally appropriate Adult Tobacco Survey questionnaire for American Indians and Alaska Natives. This questionnaire will expand data and existing knowledge of tobacco use among American Indians and Alaska Natives in order to benefit tobacco use and prevention surveillance at a tribal, state, and/or regional level. The questions will help to narrow existing gaps in knowledge of tobacco use among different tribes and inform development of tribal-specific interventions.

Current smoking prevalence among American Indians and Alaska Natives (36.0 percent) is highest compared to all other racial/ethnic groups (2000 NHIS). While national and regional data exist for American Indians and Alaska Natives, tribal level data is extremely limited. Currently, there are over 500 sovereign tribal nations in the U.S. In order to better understand tobacco use among American Indians and Alaska Natives, CDC is conducting a survey project that includes:

(1) Developing a culturally appropriate Adult Tobacco Survey questionnaire for tribes.

(2) Piloting the final instrument in approximately 24 tribes represented by six Tribal Support Centers (TSCs).

In an effort to better understand the effects of smoking in American Indian and Alaska Native populations, the Support Centers for Tobacco Programs (SCTP) will utilize a culturally appropriate questionnaire for pilot implementation in six different tribal centers. The centers are located in Alaska, California, Oklahoma, Michigan, along with two tribal centers located in the upper Midwest and upper Northwest. In total, the SCTPs will collect 2,691 completed surveys (the number varying by Center respective to the size of each tribe, 18 years of age and older), which will be representative of distinct tribal communities conducting the survey. The SCTP will be responsible for obtaining the completed surveys. Trained individuals from each of the respective communities and/or support centers will conduct interviews. Most interviews will be conducted face-to-face, with a small proportion conducted by telephone. The total annualized burden is estimated to be 1,794 hours.

Location	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Alaska	450	1	40/60
California	466	1	40/60
Michigan	450	1	40/60
Oklahoma	600	1	40/60
Upper Midwest	350	1	40/60
Upper Northwest	375	1	40/60

Dated: March 25, 2004.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7308 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Descriptive Epidemiology of Missed or Delayed Diagnoses for Conditions Detected by Newborn Screening—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Every state in the United States and Washington, DC, has a public health program to test newborn babies for congenital metabolic and other disorders through laboratory testing of dried blood spots. These programs screen for between 4 and 30 different conditions including phenylketonuria (PKU) and congenital hypothyroidism, with testing performed in both state laboratories and private laboratories contracted by state health departments. The screening process or system is broader than the state public health newborn screening program, which is composed only of the laboratory and follow-up personnel. It involves the collection of blood from a newborn, analysis of the sample in a screening laboratory, follow-up of abnormal results, confirmatory testing and diagnostic work-up. Parents, hospitals, medical providers including primary care providers and specialists, state laboratory and follow-up personnel advocates, as well as other partners such as local health departments, police, child protection workers, and courts play important roles in this process.

Most children born with metabolic disease are identified in a timely manner and within the parameters defined by the newborn screening system of each state. These children are referred for diagnosis and treatment. However, some cases are not detected at all or the detection comes too late to prevent harm. These ''missed cases'' often result in severe morbidity such as mental retardation or death.

In this project, we will update and expand a previous epidemiological study of missed cases of two disorders published in 1986. We will assess the number of cases of each disorder missed, and the reasons for the missed and legal outcomes, if any. The reasons for the missed will be tabulated according to which step or steps of the screening process it occurred. Data will be collected by asking state public health laboratory directors, newborn screening laboratory managers, follow-up coordinators, specialists at metabolic clinics and parent groups with an interest in newborn screening, for information regarding missed cases. An estimated 269 subjects (with an expected response rate of 80% from metabolic clinics, Lab Directors and Coordinators) will be requested to complete a short questionnaire that asks for information regarding the details of any missed cases of which they are aware.

The survey will highlight procedures and actions taken by states and other participants in newborn screening systems to identify causes of missed cases and to modify policies and procedures to prevent or minimize recurrences. The information gleaned from this study may be used to help craft changes in the screening protocols that will make the process more organized and efficient and less likely to fail an affected child. Furthermore, it is not clear that there is a systematic

assessment of missed cases on a population basis; this project will seek to identify procedures for routine surveillance of missed cases. The estimated annualized burden is 36 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Lab Directors	42	1	10/60
Follow-up Coordinators	42	1	10/60
Metabolic Clinic Employee	120	1	10/60
Parent Advocate	13	1	10/60

Dated: March 25, 2004.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7311 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–39–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: HIV/AIDS Prevention and Surveillance Project Reports, OMB No. 0920–0208—Extension—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting to extend the use of the currently approved form, OMB No. 0920–0208, for collecting HIV counseling, testing, and referral (CTR) program data. This current form expires March 30, 2004. This request is for an 18-month clearance past this date. Extension of the current form will allow grantees to continue to collect CTR data as they transition to the new set of CTR variables and the new program evaluation and monitoring system (PEMS). Over the next year, grantees will either transition to the new variables once they have reprogrammed their existing computer systems, or as the CDC-provided PEMS is made available. 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 core data from all grantees describing CTR services provided for at-risk persons. Until grantees are prepared for collecting the new CTR variables and reporting data electronically through PEMS, it is essential that they be allowed to continue to collect the current CTR data using the existing forms.

Completing the initial data submission will take approximately 5 minutes per form. Approximately two (2) million records annually are expected from over 11,000 directly and indirectly funded grantee facilities. The total estimated burden is 167,000 hours annually. This is the estimated burden if no one transitions to the new system during the year, but it is expected that many of the grantees will transition to PEMS in phases throughout the year. Following this notice, a separate data collection for PEMS will be submitted for public comment and will include the revised CTR data variables and associated burden estimate. CDC is requesting OMB approval for 18 months, during the transition to PEMS. The estimated annualized burden is 177 hours.

Respondents	Type of form	No. of respondents	No. of responses per respondent	Average burden/response (in hrs)
Statistical Assistant	Locally Developed Formats	16	4	2
Data Entry Clerks	Scanned Client Record Form	49	4	15/60

Dated: March 26, 2004.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control And Prevention.

[FR Doc. 04–7312 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health Organization Strategies To Provide Information and Education for Patients, Their Family Members, Friends, and Caregivers With Respect to Hematologic Cancers

Announcement Type: New.

Funding Opportunity Number: 04159.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: May 3, 2004.

Application Deadline: May 28, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a), 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241 (a)and 247b(k)(2)], as amended.

Purpose: The purpose of the program is to announce the availability of fiscal year 2004 funds for cooperative agreements for national health organization strategies to provide information and education for patients, their family members, friends, and caregivers with respect to hematologic cancers. This program will assist national health organizations in the development and implementation of strategies to promote and disseminate information and education, and to increase awareness of support services for patients, their family members, friends, and caregivers with respect to hematologic cancers, particularly leukemia, lymphoma, and/or multiple myeloma.

This program addresses the ''Healthy People 2010'' focus area of cancer, specifically Chapter 3, Goals 3–1 (Reduce the overall cancer death rate) and Goals 3–15 (Increase the proportion of cancer survivors who are living 5 years or longer after diagnosis).

Measurable outcomes of the program will be in alignment with the following performance goal for the Centers for Disease Control and Prevention (CDC): Increase the proportion of cancer of hematologic cancer survivors, particularly leukemia, lymphoma, and/or multiple myeloma who are living five years or longer after diagnosis through effective individual, community, and health care provider health promotion strategies, information dissemination, and education.

This project includes developing partnerships to facilitate the exchange of previously developed and tested hematologic cancer information and education resources (existing or newly developed) among a variety of public agencies and national health organizations. This program may also include efforts to develop and test new hematologic cancer information and education resources for individuals who may be underserved, uninsured or underinsured, or of racial/ethnic minorities if a need can be demonstrated and appropriate materials are not available.

Activities: Awardee activities for this program include development of programs, strategies, and partnerships designed to promote and disseminate previously effective developed and tested information and education resources for patients, their family members, friends, and caregivers with respect to hematologic cancers, particularly of leukemia, lymphoma, and/or multiple myeloma, as follows:

- Develop and test new hematologic cancer information and education resources for individuals who may be underserved, uninsured or underinsured, or of racial/ethnic minorities if a need can be demonstrated and no materials currently exist pending CDC approval. Performance will be measured by the extent to which the applicant reaches hematologic cancer patients, their family members, friends, and caregivers.
- Develop and carry out strategies to increase awareness of patient support services for hematologic cancer patients.

Performance will be measured by the extent to which implemented strategies increase awareness of services.

- Establish specific, measurable, and realistic short-term (one year) and long-term (three year) program objectives consistent with the purpose of this program announcement for the accomplishment of program activities.

Performance will be measured based upon the extent to which objectives are realistic, time-phased, and achievable.

- Identify and hire appropriate staff.

Performance will be measured by the extent to which the organization has hired qualified staff and supported them with resources to accomplish the goals and objectives proposed.

- Establish partnerships with other federal agencies, such as National Cancer Institute (NCI) and Health Resources and Services Administration (HRSA), Comprehensive Cancer Control (CCC) programs in state health departments, American Indian/Alaska Native organizations, U.S. territories, the District of Columbia, and/or other national health organizations to implement hematologic cancer education activities to ensure effective and efficient implementation of the program strategies.

Performance will be measured based on the extent to which the program establishes and uses new partnerships in developing and disseminating hematologic cancer education activities.

- Participate in a minimum of two CDC or other hematologic cancer partner meetings per year to facilitate the accomplishment of proposed objectives. Performance will be measured by the extent to which the organization participates in or facilitates at least two meetings per year (*e.g.* annual, regional, CDC-sponsored, etc.) to either gain information or to educate partners.
- Evaluate achievement of each goal and objective through a well-designed evaluation plan. Effectiveness will be measured based on the development and use of objective, quantitative measures to demonstrate the accomplishment of program goals, objectives, and intended outcomes.
- Disseminate information regarding organization achievements and activities to hematologic cancer patients, their family members, friends, and caregivers.

Performance will be measured by the activities undertaken to disseminate strategies and share information with partners.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Collaborate with recipients in the development, implementation, evaluation, and dissemination of program strategies designed to provide information and education, and to increase awareness of support services for patients, their family members, friends, and caregivers with respect to hematologic cancers, particularly leukemia, lymphoma, and/or multiple myeloma.
- Collaborate with recipients in the development of information dissemination approaches that relate to the purpose of this program announcement.
- Facilitate the exchange of program information, technical assistance, and the development of partnerships between recipients funded under this program announcement and federal

agencies, community organizations, health departments, and other appropriate partners. Collaborate with recipients to develop meeting agendas including identifying speakers and presenters.

• Review and approve all strategies to develop and test new materials to ensure that there is a clear demonstrated need for a particular population.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $3,000,000.

Approximate Number of Awards: 5–6.

Approximate Average Award: $500,000.

(This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $500,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 16, 2004.

Budget Period Length: 12 months.

Project Period Length: 3 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations

Applications may be submitted by national health organizations that have the capacity and ability to conduct nationwide programmatic activities related to promoting hematologic cancer education and information dissemination on support services that serve a large number of hematologic cancer patients. Applicants must demonstrate the ability to implement programs related to hematologic cancers. Due to the fact that this program is intended to serve the entire nation, to be eligible, national organizations must serve as an umbrella organization for their constituents (having regional or local chapters or memberships), implementing activities in 25 or more states.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI):

Your LOI must be written in the following format:

- Maximum number of pages: 2
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain your organization's name, address and contact information.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 35. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Double spaced
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire three year project period, and must include the following items in the order listed:

Executive Summary: The applicant should provide a clear, concise 1–2 page written summary to include:

1. Proposed strategies to promote and disseminate information and education, and to increase awareness of support services for patients, their family members, friends, and caregivers with respect to hematologic cancers.
2. Statement of capability to conduct the proposed strategies.
3. Requested amount of funding.

Capacity: Describe the applicant's history and experience with program activities or any services provided to people affected by hematologic cancers, and the rationale for use of previously conducted or newly developed innovative strategies to enhance the delivery of education, information, or support services to patients with hematologic cancers, particularly leukemia, lymphoma, and/or multiple myeloma.

Work Plan: The applicant should provide a detailed work plan for the first year that describes how the proposed activities will be conducted. The work plan should include the following:

1. *Objectives:* Specific, realistic, and time-phased, measurable, short-term (one year) and long-term (three year) objectives consistent with the intent of this program announcement.
2. *Activities:* Specific activities and strategies that will be undertaken to achieve each of the proposed short-term objectives during the budget period.
3. *Time Line:* A time line for assessing progress in meeting objectives.
4. *Staff Responsibility:* Staff responsible for completion of activities. Include the level of effort and allocation of time for each project activity by staff position.
5. *Program Evaluation:* How activities and their impact will be evaluated, including indicators of program success.

Grantees may choose to use the attached work plan format to present this information (*See* Attachment A of this announcement as posted on the CDC Web site.)

Project Management:

1. Describe the organization's structure and function, size, national membership substructure, activities on a national level, and methods of routine communication with members.

2. Describe each current or proposed staff position for this program by job title, function, education and experience, general duties, and activities with which that position will be involved.

Collaborative Activities: Describe past and proposed collaborative working partnerships with providers, community groups or others who serve or have established linkages with patients with hematologic cancers.

Budget and Justification: Provide a detailed line item budget and narrative justification of all operating expenses consistent with the proposed objectives and planned activities. Each budget item should be clearly related to a stated activity.

Participation in CDC sponsored training, workshops, or meetings is essential to the effective implementation of hematologic cancer education and information activities. Travel funds should be budgeted for the following meetings:

Three to five persons to Atlanta, Georgia to discuss program implementation progress (reverse site visit) and for consultation and technical assistance (two days, one trip per year.)

Up to two additional two-person trips to Atlanta, or other destinations to attend or assist with national workgroups, task forces, or committees (one to three days.)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit, but should not exceed 20 pages. This additional information includes:

- Curriculum vitae
- Job descriptions
- Organizational charts
- Work plan
- Any other supporting documentation

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: May 3, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: May 28, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV. 4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV. 5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used to support personnel and to purchase supplies and services directly related to program activities consistent with the scope of this announcement. While the purchase of equipment is discouraged, it will be considered for approval if justified on the basis of being essential to the program and not available from another source.
- Funds provided under this announcement are not to be used to conduct research.
- Funds may not be used for the purchase or lease of land or buildings, construction of facilities, renovation of existing space, or the delivery of clinical and therapeutic services, personal health services, medications, rehabilitation or other costs associated with screening or treatment for cancer.
- Funds provided under this announcement may not be used for the endorsement or promotion of any drugs, health products, or medical supplies and equipment.
- Applicants are encouraged to maximize the public health benefit of CDC funding. Recipients have the ability to redirect up to 25 percent of the total approved budget to achieve stated goals and objectives within the scope of the award, except from categories that require prior approval such as contracts or change in scope or key personnel. A list of required prior approval actions will be included in the Notice of Grant Award.
- Awards will not allow reimbursement of pre-award costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Christine Dauer, Public Health Advisor, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, Office of the Director, 4770 Buford Highway, NE., Mailstop K–52, Atlanta, GA 30341–3724, Telephone:

(770) 488–3056, Fax: (770) 488–4760, E-mail: *CDauer@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 04159, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Evaluation Criteria (100 Points Total)

1. Work Plan (50 Points)

- Objectives

Are short-term (one year) and long-term (three year) objectives specific, time-phased, measurable, realistic, related to identified needs and consistent with the purpose of this program announcement?

- Activities

Does the applicant's plan for achieving the proposed activities appear realistic and feasible and relate to the programmatic requirements and purposes of this program announcement?

- Evaluation Plan

Does the proposed evaluation plan address progress toward meeting goals and objectives, describe indicators of program success, and appear to be reasonable and feasible?

2. Project Management (25 Points)

Does proposed staffing, organizational structure, staff experience and background, training needs or plan, job descriptions and curricula vitae for both proposed and current staff indicate past experience in carrying out similar programs and the ability to carry out the purposes of the current program? Does the applicant demonstrate ability to manage the project, including lines of communication, and organizational support? Can the activities described reasonably be accomplished? What is the relationship of the activities to the expected outcomes?

3. Collaborative Activities (15 Points)

Does the applicant describe clear and complete plans to develop relationships with or engage other organizations, agencies, or partners to provide for complementary or supplementary activities and resources?

4. Capacity (10 Points)

Does the applicant demonstrate the capacity and ability of the organization to implement proposed activities including, infrastructure, relationship to intended audience, and experience with partners?

5. Budget and Justification (Not Scored)

Is the budget well-justified, reasonable, and consistent with the purpose and activities of the program?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for Chronic Disease (NCCD), Division of Cancer Prevention and Control (DCPC). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

V.3. Anticipated Announcement and Award Dates

August 16, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Christine Dauer, Public Health Advisor, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, Office of the Director.

For mail service: 4770 Buford Highway, NE., Mailstop K–52, Atlanta,

GA 30341–3724, Telephone: (770) 488–3056, Fax: (770) 488–4760, E-mail: *CDauer@cdc.gov.*

For financial, grants management, or budget assistance, contact: Angela Webb, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2784, E-mail: *aqw6@cdc.gov.*

VIII. Other Information

Technical Assistance Workshop

Technical assistance will be available for potential applicants during a workshop scheduled for April 26, 2004 in Atlanta, GA at the Atlanta Airport Executive Conference Center. The purpose of the workshop is to help potential applicants understand the scope and intent of the program announcement, Public Health Service funding policies, and application and review procedures. Participation in the workshop is not mandatory. Applicants who wish to attend the workshop will be responsible for their own travel and lodging expenses. Applicants who plan to attend the workshop must RSVP to Christine Dauer at e-mail *CDauer@cdc.gov* by no later than April 18, 2004.

Dated: March 26, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7306 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Evaluation of the Use of Rapid HIV Testing in the United States

Announcement Type: New.
Funding Opportunity Number: 04138.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:
Letter of Intent Deadline: May 3, 2004.
Application Deadline: June 1, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. section 247b(k)(2), as amended.

Purpose: The purpose of the program is to evaluate how rapid tests for HIV are being implemented and used in clinical practice and identify potential opportunities to provide guidance to assist sites in making decisions on the appropriate use of these tests. Rapid HIV testing is a new and growing segment of laboratory testing and of HIV diagnosis in this country. These tests can be used in place of the more complex and time-consuming conventional enzyme immunoassay screening tests. Rapid tests can provide test results in a single patient visit, providing earlier opportunities for intervention and decreasing the percentage of HIV-infected people who fail to learn their status using the multi-visit algorithm. Several new rapid HIV tests have been approved by the United States Food and Drug Administration (FDA) during the past year (Reveal ™ Rapid HIV–1 Antibody Test, OraQuick® Rapid HIV–1 Antibody Test, and Uni-gold ™ Recombigen® HIV) and others are in the FDA pipeline. The OraQuick test has been waived from the bulk of the regulatory requirements of the Clinical Laboratory Improvement Amendments (CLIA) and is being implemented in sites that have not typically performed testing before, such as outreach clinics, community-based organizations (CBO), and mobile units. The other two tests are currently categorized as moderate complexity under CLIA, thus requiring users to meet CLIA requirements for non-waived testing, at minimum.

In an effort to assure safe and effective use of these devices, the FDA specified restrictions for their sale and distribution. These restrictions are as follows (from the manufacturer's package insert):

1. ''Sale of the test is restricted to clinical laboratories that have an adequate quality assurance program, including planned systematic activities to provide adequate confidence that requirements for quality will be met and where there is assurance that operators will receive and use the instructional materials.
2. The test is approved for use only by an agent of a clinical laboratory;
3. Test subjects must receive the ''Subject Information'' leaflet prior to specimen collection, and appropriate information when test results are provided;
4. The test is not approved for use to screen donors of blood, plasma, cells or tissues.''

Since HIV testing is an integral part of HIV diagnosis and surveillance, Centers for Disease Control and Prevention (CDC) also has an interest in ensuring patient safety and the appropriate use of rapid HIV testing. This project will be helpful in determining whether sites using these tests are following the FDA sales restrictions and meeting CLIA requirements, as well as whether there is a need for additional guidance to improve test utilization and testing quality.

This program addresses the ''Healthy People 2010'' focus area(s) of (1) Reducing the burden of HIV infection and the rate of increase of new infections; and (2) Access to Quality Health Services.

Measurable outcomes of the program will be in alignment with the following performance goal for the Public Health Practice Program Office (PHPPO): Assure the public health infrastructure at the Federal, State and local levels has the capacity to provide essential public health services to the citizens of the nation to respond to bioterrorism, other infectious disease outbreaks, and other public health threats and emergencies and prepare frontline state and local health departments and laboratories to respond to current and emerging public health threats.

Activities:

Awardee activities for this program are as follows:

- Provide leadership in developing a program to determine the scope of rapid HIV test utilization, including the number of sites where rapid HIV tests are offered, the specific tests used, testing volume, purpose for testing, patient populations, and other characteristics related to the sites where rapid HIV testing is being implemented and used.
- Evaluate how these tests are integrated into the health delivery system, for example methods used for specimen collection and handling, results reporting, confirmation of preliminary positive results, and use of results by practitioners.
- Assess the practices used to assure quality (*e.g.*, quality control and quality assurance) and testing personnel training and competency.
- Catalog problem sites that have been identified and reported using these tests, such as follow-up on preliminary positives, false positive or negative results, testing delivery, costs of testing, provision of training to testing personnel.
- Evaluate the financial costs associated with using rapid and conventional (enzyme immunoassay) HIV screening tests in various types of practice settings.
- Recommend specific interventions, such as practice guidelines or training that could improve the utilization and quality of testing using rapid tests.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Assist the Awardee in identifying sites using rapid HIV tests.
- Provide background information on accepted practices and guidelines for HIV testing.
- Provide technical assistance with the development of data collection instruments.
- Identify subject matter experts on HIV testing and promote collaboration.
- Work with the Awardee to identify potential systematic interventions to promote quality improvement.
- If requested, provide a Health Economist to assist with economic evaluations.
- Collaborate in analyzing the data and information collected and in preparing written summaries.
- Assist in the preparation of manuscripts for peer-reviewed publications.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $ 200,000.

Approximate Number of Awards: one.

Approximate Average Award: $ 200,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000 (This ceiling is for the first 12-month budget period.).

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to the continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements. Your application should indicate the extent of your experience in working with clinical laboratories.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Five.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Goals and objectives.
- Methods and Technical Approach.
- Project Management and Staffing.
- Budget—total funds to be requested.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Double spaced.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Purpose and Need.
- Goals and Objectives.
- Methods and Technical Approach.
- Project Management and Staffing.
- Measures of effectiveness to demonstrate accomplishment of program activities.
- Timeline.
- Evaluation Plan.
- Required Resources with budget and justification.
- Performance Measures.

Note: the budget and performance measures sections will not count toward the page limitation.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes, Resumes, and Organizational Charts.
- Letters of Support.
- References.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a

grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: May 3, 2004. CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- None

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Tracy L. Carter, M.P.H., Laboratory Program Specialist, Centers for Disease Control and Prevention, PHPPO/DLS Mailstop G–25, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–2523, Fax: 770–488–8282, E-mail: *tsc1@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04138, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Methods and Technical Approach (30 points).

a. Does the applicant clearly and succinctly describe the steps to be taken in the planning and implementation of the proposed cooperative agreement?

b. Are the methods to be used to carry out the responsibilities of the proposed cooperative agreement feasible and explained in sufficient detail?

2. Project Management and Staffing (30 points).

a. Does the applicant describe a project management and staffing plan, and demonstrate sufficient knowledge, expertise, and other resources required to perform the responsibilities in this project?

b. Does the applicant describe the staff qualifications and time allocations of key personnel to be assigned to this project, facilities and equipment, and other resources available for performance of this project?

3. Goals and Objectives (20 points).

a. Does the applicant clearly describe an understanding of the objectives of this project, the relevance of the proposal to the stated objectives, and any unique characteristics of populations to be studied?

b. Are the goals and objectives measurable, specific, and achievable?

4. Evaluation Plan and Timeline (20 points).

Does the applicant describe the schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments?

5. Proposed Budget (reviewed but not scored).

Is the proposed budget reasonable, clearly justified, and consistent with the intended use of funds?

6. Performance Goals (reviewed but not scored).

Is the application consistent with the Government Performance and Results Act of 1993?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the PHPPO. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria

listed in the ''V.1. Criteria'' section above.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address:*http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–15 Proof of Non-Profit Status.
- Executive Order 12372 does apply to this announcement.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: James V. Lange, Ph.D., Project Officer, Centers for Disease Control and Prevention, PHPPO/DLS MS G–23, 4770 Buford Hwy, Atlanta, GA 30341–3717, Telephone: 770–488–8096, E-mail: *JLange@cdc.gov.*

For financial, grants management, or budget assistance, contact: Sharon Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2748, E-mail: *sqr2@cdc.gov.*

Dated: March 26, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7325 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, Request for Applications OH–04–003

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, Request for Applications OH–04–003.

Times and Dates: 8 a.m.–8:30 a.m., May 4, 2004 (Open). 8:30 a.m.–5 p.m., May 4, 2003 (Closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 22314, Telephone (703) 684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–04–003.

For Further Information Contact: Price Connor, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road NE., Atlanta, GA 30329, MS–E74, Telephone (404) 498–2511.

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: February 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–7310 Filed 3–31–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 69296, October 20, 1980, as amended most recently at 69 FR 15344–15345, dated March 25, 2004) is amended to revise the mission statement of the Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion.

Section C–B, Organization and Functions, is hereby amended as follows: Add the following items to the mission statement for the *Office of the Director (CL81):*

(8) Develops health communication campaigns at the national and State levels; (9) guides the production and distribution of print, broadcast, and electronic materials, for use in programs at the national and State

levels; (10) provides leadership, consultation and technical assistance on health communication issues for cancer prevention and control.

Delete in its entirety the title and function statement for the *Epidemiology and Health Services Research Branch (CL82)* and insert the following:

Epidemiology and Applied Research Branch (CL82). (1) Designs, implements, and analyzes research in epidemiology, health services, applied economics, behavioral science and communications that contribute to scientific knowledge related to cancer prevention and control; (2) monitors trends in the use of preventive services and behaviors which affect the risk of cancer incidence or mortality; (3) conducts both qualitative and quantitative research to identify the determinants of cancer prevention and screening behaviors; (4) studies the use and effectiveness of health care resources allocated to the primary and secondary prevention of cancer; (5) assesses the quality and appropriateness of screening, follow-up, and treatment for cancer discovered through early detection; (6) evaluates the effectiveness of programs sponsored by the Division of Cancer Prevention and Control; (7) provides scientific and medical expertise to the Division; (8) provides technical assistance in research design and evaluation of cancer control programs to other organizational units in the Division, State health departments, and national and international non-profit and for profit organizations; (9) establishes collaborative partnerships with public and private organizations of national and international stature.

Delete in its entirety the title and functional statement for the *Communications and Behavioral Science Branch (CL85).*

Dated: March 8, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 04–7347 Filed 3–31–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Consultant and Evaluator Qualifications Form.

OMB No.: New collection.

Description: The Administration for Native Americans (ANA) Consultant and Evaluator Qualifications Form is used to collect information from prospective panel reviewers in compliance with 42 USC Section 2991a–1. The form will allow the Commissioner of ANA to select qualified people to review grant applications for: Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance, and Environmental Regulatory Enhancement. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents are drawn from the public with a legislatively required preference being given to those who are Native American, Native Alaskan, Native Hawaiian and other Pacific Islanders. These project evaluation panels review and rank applications.

Respondents: Tribal governments, native non-profits, tribal colleges & universities.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Consultant and Evaluator Qualifications Form	300	1	1	300

Estimated Total Annual Burden Hours: 300.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Washington, DC, Attn: Desk Officer for ACF, E-mail: *katherine t. astrich@omb.eop.gov.*

Dated: March 25, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–7262 Filed 3–31–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Availability, etc: Head Start Programs—Graduate Student Research Grants

AGENCY: Administration for Children and Families (ACF) & Office of Planning, Research and Evaluation (OPRE), HHS.

Funding Opportunity Title: Head Start Graduate Student Research Partnership Development Grants.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OPRE–YD–0003.

CFDA Number: 93.600.

Due Date for Letter of Intent (Encouraged): 3 weeks prior to June 1, 2004.

Due Date for Applications (Required): The due date for receipt of applications is: June 1, 2004.

I. Funding Opportunity Description

Funds are provided for Graduate Student Research Grants to develop or enhance Head Start Research Partnerships.

This grant program is part of a larger Head Start research effort. Three other grant funding mechanisms are being offered concurrently with the one described in this announcement. They include: (1) Head Start Graduate Student Research Grants, (2) Head Start-University Partnerships: Measurement Development for Head Start Children and Families, and (3) American Indian-Alaska Native Head Start-University Partnerships. For more information, please see these other Head Start Research announcements listed in the **Federal Register** or listed on *www.Grants.Gov*, or send an inquiry to the e-mail address listed above.

Funding for this grant program is shared with the Head Start Graduate Student Research Partnership Development Grants. Relative funding for the two is contingent upon the results of the review process.

Priority Area: Head Start Graduate Student Research Partnership Development Grants.

A. Purpose

This is to announce the availability of Head Start Graduate Student Research Grant funds to support graduate students' efforts to create, develop, and/or enhance ongoing research partnerships with Head Start programs in good standing.

B. Statutory Authority

Section 649 of the Head Start Act, as amended by the Coats Human Services Reauthorization Act of 1998 (Pub. L. 105–285) and 42 U.S.C. 9844

C. Background

Starting in 1991, ACF began explicitly supporting the relationship between established Head Start researchers and their graduate students by awarding research grants, on behalf of specific graduate students, to conduct research in Head Start communities.

The unique partnership that is forged between mentor and student within the Head Start research context serves as a model for the establishment of other partnerships within the community (*e.g.*, researcher-Head Start staff, researcher-family, etc.). This foundation helps foster the skills necessary to build a graduate student's trajectory of successful partnership-building and contributions to the scientific community. Within this nurturing and supportive relationship, young researchers are empowered to become autonomous researchers, learning theory as well as the process of interacting with the various members and relevant organizations within their communities.

However, effectively developing new research partnerships between researchers and Head Start communities also requires considerable planning, effort, and commitment. Without resources to support this work, students in graduate programs that do not already have a research partnership with a Head Start program are discouraged from conducting research in this arena. Additionally, in places where partnerships between researchers and Head Start communities already exist, the benefit of the partnerships for the Head Start partners could be strengthened by focused, on-going efforts that specifically target enhancing the collaborative relationship. One example of such an effort might be to help a Head Start partner interpret and implement research findings in a program.

In recognition of these facts, ACF recently established a new funding mechanism designed to facilitate the entry of more mentor/student teams to the field of Head Start research by encouraging the development of such new research partnerships. It is also intended to support students dedicated to strengthening existing research partnerships.

The broad goals of this priority area are similar to those of the Head Start Graduate Student Research Grant program, and can be summarized as follows:

- Provide direct support for graduate students engaging in the development of research partnerships with Head Start programs, thus strengthening the links between Head Start and the research community, and increasing the research that contributes to the knowledge base about the best approaches for delivering services to diverse, low-income families and their children;
- Promote mentor-student relationships which support students' graduate training and professional development as young community-based researchers engaged in policy-relevant, applied research;
- Emphasize the importance of developing true working research partnerships with Head Start programs and other relevant entities within the community, thereby fostering skills necessary to build a student's trajectory of successful partnership-building and contributions to the scientific community; and
- Support the active communication, networking and collaboration among graduate students, their mentors and other prominent researchers in the field, both during their graduate training, as well as into the early stages of their research careers.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $ 80,000.

Anticipated Number of Awards: ACF anticipates funding 4–8 projects.

Ceiling on Amount of Individual Awards: $10,000.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: $5,000.

Average Projected Award Amount: None specified.

Project Periods for Awards: One year project and budget periods.

III. Eligibility Information

1. Eligible applicants include the following:

- State controlled institutions of higher education.
- Private institutions of higher education.
- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.
- Other: Faith-based and community organizations that meet all other eligibility requirements.

Additional Information on Eligibility

A. Eligible applicants are institutions of higher education on behalf of *graduate students enrolled in a doctoral program.*

B. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. Faith-based and community organizations that meet other eligibility requirements are also eligible to apply.

C. Although the faculty mentor is listed as the Principal Investigator and must be committed to taking a central role in maintaining an ongoing research partnership with a Head Start program, this grant is intended for an individual student to be the primary conduit through which the research-related relationship is forged. Information about both the graduate student and the student's faculty mentor is required as part of this application.

D. The graduate student applicant must agree to attend the annual meeting for all Head Start Graduate Student grantees. The budget should reflect travel funds for such purposes. This annual grantee meeting is typically scheduled during the summer or fall of each year and is held in Washington, DC. It is anticipated that the fall 2004 meeting will be held in late October. During this meeting, each student typically presents a brief overview of his or her study or proposed project. The intended goal of the meeting is to stimulate potentially useful and constructive feedback from other students and mentors, as well as to facilitate collaboration, networking and mentoring activities.

E. Given the strong emphasis that is placed on supporting the mentor-student relationship, it is crucial that the faculty mentors attend and actively participate in the activities of the annual grantee meeting for all Head Start Graduate Students. The budget should reflect travel funds for such purposes, as appropriate. However, if the faculty mentor does plan to attend the annual Graduate Student grantee meeting, but

will utilize another source of travel funds, such arrangements are encouraged and should be clearly noted in the application.

F. A university faculty member must serve as a mentor to the graduate student; this faculty member is listed as the ''Principal Investigator.'' The application must include a letter from this faculty member stating that s/he has reviewed and approved the application, stating that s/he is committed to supporting the Head Start research partnership that the student is developing, describing the student's status in the doctoral program, and describing how the faculty member will regularly monitor the student's work. It should also describe, in as much detail as possible, the potential for the research partnership development project to lead to a research effort that would include the student's dissertation study.

G. The Principal Investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

H. While one of the long-term purposes of the relationship should be to generate a doctoral dissertation research opportunity in the Head Start setting, the student should take an approach that is based in community/ecological/empowerment models, in which research needs are considered in the larger context of program needs, as well as mutually beneficial and empowering relationships. Appropriate activities during the grant period may include, but are not limited to, providing direct services and assistance to Head Start or Early Head Start programs with program activities, conducting assets/needs assessments, conducting focus groups, jointly identifying or defining problems with Head Start partners, conducting or facilitating staff trainings, and other activities that foster collaborative, reciprocal relationships with Head Start partners.

I. The partnership development project must be an independent effort conducted by the individual graduate student or a well-defined portion(s) of a larger project currently being conducted by a faculty member. If the project is part of a larger effort, the proposal must clearly distinguish between the student's portion of the activities and those of the larger project. Given the emphasis on partnership development, the graduate student must have a clearly articulated and primary set of responsibilities for conducting the proposed partnership development and subsequent research activities described in the application.

J. Graduate students will be expected to identify: (a) a set of goals and objectives for the year, as well as a set of benchmarks for guiding and assessing incremental progress toward attaining these goals and objectives, and (b) specific products they expect to generate during the grant period such as community assets/needs assessments, problem descriptions, summaries of focus group findings or training efforts, and/or drafts of dissertation proposals.

K. The application must contain a letter from a Head Start or Early Head Start program certifying that they have entered or are willing to explore entering into a partnership with the applicant and the application has been reviewed and approved by the Head Start or Early Head Start Policy Council (*see* Section IV. Application and Submission Information for further details about these letters).

L. Grant recipients are encouraged to build upon their work by subsequently applying for the Head Start Graduate Student Research Grants to support doctoral dissertation research.

M. The graduate student must write the application in its entirety, consistent with the format and style guidelines of the Publication Manual of the American Psychological Association, 5th ed. (APA 2001) and the general principles and guidelines of the Ethical Principles of Psychologists and Code of Conduct 2002 (APA, 2002).

N. Any nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. Any of the following constitutes proof of nonprofit status:

- A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A written statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.
- Any of the items above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

O. Private, nonprofit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching

There is no matching requirement.

3. Other

All applicants must have Dun & Bradstreet numbers. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1 (866) 705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applications that fail to follow the required format described in Section IV.2. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $10,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

It is unlikely that any individual mentor will be funded for more than one graduate student research grant if there are at least 10 applications from different mentors/institutions that qualify for support.

IV. Application and Submission Information

1. Address To Request Application Package

The Head Start Research Support Technical Assistance Team, 1 (877) 663–0250, is available to answer questions regarding application

requirements and to refer you to the appropriate contact person in ACF for programmatic questions. You may also e-mail your questions to: *opre@xtria.com*. Refer to the Funding Opportunity Number: HHS–2004–ACF–OPRE–[Insert # here].

ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, e-mail *opre@xtria.com*.

URL To Obtain an Application

Copies of this Program Announcement may be downloaded approximately 5 days after publication in the **Federal Register** at *http://www.acf.dhhs.gov/programs/core/ongoing_research/funding/funding.html*.

Application materials described in Section IV. can be downloaded from the following Web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm#apps*.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Format and Organization. Applicants are strongly encouraged to limit their application to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials but not the Standard Federal Forms (see list below). Applicants must number the pages of their application beginning with the Table of Contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format, and in the order, presented below:

a. Cover Letter
b. Contact information sheet (see details below)
c. Standard Federal Forms
   Standard Application for Federal Assistance (Form 424)
   Budget Information—Non-Construction Programs (Form 424A)
   Certifications Regarding Lobbying
   Disclosures of Lobbying Activities (if necessary)
   Certification Regarding Environmental Tobacco Smoke
   Assurance Regarding Non-Construction Programs (Form 424B)
   Assurance Regarding Protection of Human Subjects
d. Table of Contents
e. Project Narrative Statement (see details below)
f. Appendix
   Proof of Nonprofit Status (*see* Section V.1.F)
   Curriculum Vitae for Student and Faculty Advisor
   Letter of Support from Advisor
   Letter(s) of agreement with Head Start program(s) (see details below)
   Letter(s) of agreement with Head Start Policy Council(s) (see details below)
   Official Transcript of Student Reflecting Graduate Courses

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. ACF will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm*.

Content of Contact Information Sheet: The contact information sheet should include complete contact information, including addresses, phone and fax numbers, and e-mail addresses, for the graduate student applicant, the Principal Investigator(s), and the institution's grants/financial officer (person who signs the SF–424).

Content of Project Narrative Statement: The project narrative should be carefully developed in accordance with ACF's research goals and agenda as described in the Purpose, Background, and Priorities of this funding opportunity, and the structure requirements listed in the Section V. Application Review Information. Please see Section V.1. Criteria for instructions on preparing the project summary/abstract and the full project description.

Content of Letters of Agreement: For research conducted with Head Start, the application must contain (A) an original copy of a letter from the Head Start or Early Head Start program certifying that they have entered into a research partnership with the applicant (graduate student) and (B) a separate letter certifying that the application has been reviewed and approved by the local Head Start Program Policy Council. This certification of approval or pending approval by the Policy Council must be an original letter from the official representative of the Policy Council itself.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on June 1, 2004. Mailed or hand-carried applications received after

4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, e-mail *opre@xtria.com*.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/ overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mails service, or in other rare cases. Determinations to extend or waive deadline requirements rest with the ACF Chief Grants Management Officer.

Due date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or e-mail: The number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do not include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or e-mail: *opre@xtria.com.*

The table below provides additional detail about the standard Federal forms that need to be submitted, including what information is required on them, where these forms can be found, and when they must be submitted.

What to submit	Required content	Required form or format	When to submit
Standard Application for Federal Assistance (form SF 424).	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Budget Information—Nonconstruction Programs (form SF 424A).	Must be filled out completely and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Lobbying ...	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Disclosure of Lobbying Activities (SF LLL).	If necessary (see Certification Regarding Lobbying), must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Environmental Tobacco Smoke.	Copy must be enclosed with application (signing and submitting the proposal certifies its content).	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Assurance Regarding Nonconstruction Programs (form SF 424B).	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Assurance Regarding Protection of Human Subjects.	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

Additional Forms

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodation or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447. A current list of the Single Points of Contact (SPOCs) for each State and Territory is posted at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc. html.*

5. Funding Restrictions

A. Pre-award costs are not allowable.

B. Due to the small amount of the grant, the applicant and the applicant's institution are strongly encouraged to waive indirect costs. An authorized representative of the applicant's institution must submit a written acknowledgement that the indirect costs are being waived. In the event that waiving the indirect costs is not possible, the applicant is strongly encouraged to apply the university's or nonprofit institution's off-campus research rates for indirect costs.

C. *Sharing of Awards.* Awards can not be divided among two or more students.

6. Other Submission Requirements

Electronic Address to Submit Applications: www.Grants.Gov.

Electronic Submission: Please see Section IV.2. Content and Form of Application Submission for guidelines and requirements when submitting applications electronically.

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, e-mail *opre@xtria.com.*

Hand Delivery: Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Due Date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or e-mail: The number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do not include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or e-mail: *opre@xtria.com.*

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004. An agency may 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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be

provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

A. Project Summary/Abstract: Provide a summary of the project description (one page or less) with reference to the funding request.

B. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support from concerned parties other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

C. *Results and Benefits Expected:* Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

D. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives, and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. *Additional Information:* Following are requests for additional information that need to be included in the application:

1. Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. Organizational Profiles: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission.

The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate; or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

3. Letters of Support: Provide statements from the community, public and commercial leaders that support the project proposed for funding. All documents must be included in the application at the time of submission.

G. *Budget and Budget Justification:* Provide line item detail and detailed calculations for each budget object class identified in the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss

the necessity, reasonableness, and allocability of the proposed costs.

General

The following are guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or Principal Investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops must be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

Competitive Criteria for Reviewers: Head Start Graduate Student Research Partnership Development Grants—The three criteria areas that follow will be used to review and evaluate each application. Address each in the Project Narrative Section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. (100 points total.)

Approach: 40 points

- The extent to which the approach is based in community/ecological/empowerment models, in which research needs are considered in the larger context of program needs, as well as mutually beneficial and empowering relationships.
- The extent to which the proposal demonstrates an approach to the planning, effort, and commitment to development and/or enhancement of Head Start-research partnership(s) consistent with the descriptions in this announcement (*see* III.A.11 for further details).
- The extent to which there is a discrete project designed by the graduate student. If the proposed project is part of a larger project designed by others, the approach section should clearly delineate the research partnership development component to be carried out by the student and how it is distinguished from the larger project (*see* III.A.12 for further details).
- The extent to which the goals and objectives of the proposed activities, the set of benchmarks for guiding and assessing progress, and the set of products to be generated are clearly articulated and reflect an appropriate understanding of the how these activities will fit within the context and complexities of the Head Start program's operations (*see* III.A.13 for further details).
- The extent to which the description of the proposed project articulates a set of partnership development activities that are consistent with the activities described in this announcement, as opposed to a set of activities associated with the implementation of an already formulated research study.
- The scope of the project is reasonable for the funds available and feasible for the time frame specified.
- The extent to which the planned approach or proposed research partnership activities reflect sufficient opportunities for written input from and an active partnership with the Head Start program (including the separate required review and written approval of the proposed partnership activities from the Head Start program and the Head Start Program Policy Council).
- The extent to which the budget and budget justification are appropriate for carrying out the proposed research project development activities.
- The extent to which proposed products reflect concrete and measurable steps toward design of a future dissertation project.

Staff and Position Data: 35 points

- The extent to which the faculty mentor and graduate student possess the expertise necessary to successfully form a research partnership with a Head Start program as demonstrated in the application and information contained in their vitae.
- The Principal Investigator/faculty mentor has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the faculty mentor and graduate student reflect an understanding of and sensitivity to the issues of working in a community setting and in a reciprocal partnership with Head Start program staff and parents.
- The adequacy of the time devoted to this project by the faculty mentor for mentoring the graduate student. The proposal should include evidence of the faculty mentor's commitment to mentoring the individual graduate student, and as appropriate, willingness to serve as a resource to the broader group of Head Start Graduate Students funded under this award.
- The extent to which the mentor-mentee relationship is clearly described and has the potential to continue throughout the student's dissertation process.

Results or Benefits Expected: 25 points

- The presentation reflects original work done by the student (consistent with the general principles and guidelines of the Ethical Principles of Psychologists and Code of Conduct 2002 (APA 2002).
- The extent to which the literature review, as well as a description of the needs of the local community if appropriate, is current, comprehensive, and adequately supports the need for developing this or similar research partnerships.
- The extent to which proposed goals and objectives for the year address the needs identified.
- The extent to which the specific products to be generated through the grant, as well as the benchmarks for assessing progress toward these goals and objectives, are clearly described and will potentially benefit the Head Start and/or research communities.
- The extent to which the literature review has a complete set of reference citations and is written consistent with the guidelines of the Publication Manual of the American Psychological Association, 5th ed. (APA 2001).
- The extent to which the proposed project is appropriate to the student's level of ability and the stated time frame for completing the project.
- The extent to which potential research questions are clearly stated and are of importance and relevance for low-income children's development and welfare.

2. Review and Selection Process

Each application will undergo an eligibility and conformance review by Federal staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

The competitive review will be conducted in the Washington, DC metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of early childhood education and intervention research, early learning, child care, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

OPRE will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Director of OPRE.

The Director of OPRE, in consultation with the Commissioner of the Administration on Children, Youth, and Families (ACYF), will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations. The Director may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

VI. Award Administration Information

1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing by ACF.

2. Administrative and National Policy Requirements

All applicants are responsible for conforming to the United States Executive Branch Code of Federal Regulations (*http://www.gpoaccess.gov/cfr/index.html*). The following regulations have been identified as having particular relevance for ACF grants: 45 CFR parts 74 and 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: (SF–269 long form) Semi-annually and a final report is due 90 days after the end of the grant period.

Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

VII. Agency Contacts

1. Program Office Contact

ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Partnership Development Grants, 1 (877) 663–0250, e-mail *opre@xtria.com.*

2. Grants Management Office Contact

Sylvia Johnson, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447, 1 (202) 260–7622, e-mail: *sjohnson@acf.hhs.gov.*

VIII. Other Information

Applicants under this announcement are advised that subsequent sale and distribution of products developed under this grant will be subject to the Code of Federal Regulations, Title 45, part 74.

The use of secondary data analysis in order to refine and validate newly-developed measures in relation to already standardized measures is strongly advised.

Definitions

Budget Period—For the purposes of this announcement, budget period means the 12-month period of time for which ACF funds are made available to a particular grantee (*e.g.*, beginning on September 16, 2004, and ending on September 15, 2005).

Project Period—For the purposes of this announcement, the project period is the same length as the budget period.

Dated: March 26, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research, and Evaluation.

[FR Doc. 04–7258 Filed 3–31–04; 8:45 am]

BILLING CODE 4184–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Availability, etc.: Head Start Programs—Measurement Development; University Partnerships

AGENCY: Administration for Children and Families (ACF) & Office of Planning, Research and Evaluation (OPRE), HHS.

Funding Opportunity Title: Head Start-University Partnerships: Measurement Development for Head Start Children and Families.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OPRE–YF–0001.

CFDA Number: 93.600.

Due date for Letter of Intent (Encouraged): 3 weeks prior to June 1, 2004.

Due Date for Applications (Required): The due date for receipt of applications is: June 1, 2004.

I. Funding Opportunity Description

Funds are provided for Head Start-University Partnerships: Measurement Development for Head Start Children and Families, for research activities to develop and test outcome measures to be used with Head Start children and families.

This grant program is part of a larger Head Start research effort. Three other grant funding mechanisms are being offered concurrently with the one described in this announcement. They include: (1) American Indian-Alaska Native Head Start-University Partnerships, (2) Head Start Graduate Student Research Grants, and (3) Head Start Graduate Student Research Partnership Development Grants. For more information, please see these other Head Start Research announcements listed in the **Federal Register** or listed on *http://www.Grants.Gov,* or send an inquiry to the email address listed above.

Priority Area: Head Start-University Partnerships: Measurement Development for Head Start Children and Families.

A. Purpose

The purpose of this announcement is to report the availability of funds to support grants for development of measures to directly assess children and parent-child relationships for low-income children from birth through age five, including culturally and linguistically diverse children and families. Grants will require program-researcher partnerships with Head Start, Early Head Start, or related programs.

B. Statutory Authority

Section 649 of the Head Start Act, as amended by the Coates Human Services Reauthorization Act of 1998 (Pub. L. 105–285) and 42 U.S.C. 9844.

C. Background

The Head Start program has engaged in systematic consideration of reliable and valid child and family outcome measures through an ongoing series of recent initiatives, outlined below.

1. Head Start Program Performance Measures Initiative and National Studies

Starting in 1995, in response to requirements of the 1994 Head Start Act and the 1993 Government Performance and Results Act, Head Start launched a comprehensive Program Performance Measurement initiative. The initiative is based on a pyramid-shaped conceptual framework that depicts the empirical links between provision of a comprehensive high-quality child development and family support program, and the resulting outcomes for program participants. The initiative's centerpiece is the Head Start Family and Child Experiences Survey (FACES). FACES is an ongoing, longitudinal study of successive nationally-representative cohorts of Head Start programs, families, and children starting in fall 1997, 2000, and 2003. A comprehensive measurement battery has been developed and refined, encompassing parent and staff interviews and ratings, observational

measures of classroom quality, and direct, one-to-one child assessments. Please see *http://www.acf.hhs.gov/programs/core/ongoing_research/faces/faces_intro.html.* The Head Start Quality Research Center Consortium has contributed and validated additional measures of children and families, and uses the FACES battery as a cross-site core of measures. For more information, please see *http://www.acf.hhs.gov/programs/core/ongoing_research/qrc/qrc_2001.html.*

The Head Start reauthorization of 1998 (COATES, Pub. L. 105–285) mandated a study of the national impact of Head Start. The FACES battery was updated to reflect improvements in measurement for this nationally-representative, randomized study launched in fall 2002, and to focus particularly on measures likely to be responsive to intervention and appropriate for settings other than Head Start. For more information please see *http://www.acf.hhs.gov/programs/core/ongoing_research/hs/impact_intro.html.* Also in 1998, Congress mandated more specific outcome measures for Head Start, moving beyond the National Goals Panel system used in FACES to indicate thirteen specific required outcomes across domains of language, literacy and numeracy. The Head Start Child Outcomes Framework placed these mandated outcomes in the context of a comprehensive focus on multiple domains of development. Programs were required to demonstrate ongoing developmental assessments across these domains, using measures aligned with their chosen curricula. Funded in 2002, The Head Start Child Outcomes Research Support Consortium (CORS) has focused on models of using observational measures of children's school readiness skills and abilities to improve program quality, as well as validating observational measures through administration of direct child assessments. Please see *http://www.acf.hhs.gov/programs/core/ongoing_research/cors/cors_intro.html.*

In April 2002, as part of Good Start, Grow Smart, President Bush announced a National Reporting System for Head Start, requiring direct assessment of all Head Start children at the beginning and end of the year prior to Kindergarten entry. Please see *http://www.whitehouse.gov/infocus/earlychildhood/earlychildhood.html.* National experts, including those at the NICHD/ACF meeting described below, offered recommendations on design and measures. A brief child assessment battery was developed and pilot tested, program staff were trained, and the system was launched in fall, 2003. Please see *http://www.acf.hhs.gov/programs/hsb/pdf/NRS.pdf.*

In addition to these developments in the preschool program, comprehensive measures were developed for the Early Head Start Research and Evaluation Project (1995–2002), which included an experimental evaluation of initially-funded Head Start programs in 17 communities across the country. The Early Head Start Performance Measurement initiative modified the Head Start pyramid to illustrate the importance of relationships at the core of the Early Head Start program: Relationships between parents and children, children and caregivers, and caregivers and parents. The Early Head Start pyramid also reflects the four cornerstones of the program: Child, parent, staff and community. Please see *http://www.acf.hhs.gov/programs/core/ongoing_research/ehs/ehs_perf_measures.html.*

Most of these national studies have not included participants in American Indian/Alaska Native programs or Migrant and Seasonal Head Start programs, primarily because experts were not satisfied with the cultural or linguistic appropriateness of available measurement techniques. Special research initiatives have been undertaken with both of these Head Start populations. The American Indian/Alaska Native research and outcomes assessment project has developed an annotated bibliography of research and a compendium of recommended measures. Please see *http://www.acf.hhs.gov/programs/core/ongoing_research/hs/hs_aian.html.*

The Migrant and Seasonal Head Start research design development project is currently exploring research design and measurement options for this population. It will eventually be posted at *http://www.acf.hhs.gov/programs/core/ongoing_research/hs.*

2. NICHD/ACF/ASPE Meeting

In June, 2002, a workshop was sponsored by the National Institute of Child Health and Human Development (NICHD), ACF, and the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS) entitled ''Children's Early Learning, Development, and School Readiness: Conceptual Frameworks, Constructs, and Measures.'' Convening a broad panel of national experts, the workshop produced a compendium of measures, as well as offering principles and recommendations for early childhood assessments. Measures were organized according to a three-tiered system: (1) Published and widely-used; sensitive to intervention; reasonable training requirements; (2) less widely used; training may be labor intensive; may be most useful for in-depth assessment; (3) experimental, theory-driven, lacking full psychometric validation.

Among the recommendations that emerged during the workshop were the following:

- Ground instruments in child development theory and data;
- Develop measures with practical relevance;
- Use measures appropriate to the population (language, culture, age span, clinical status);
- Include direct child assessment with parent and teacher report;
- Require evidence of sound psychometric properties;
- Develop and maintain guidelines for training and administration;
- Control for Type I and Type II errors and repeated testing effects; and
- Promote integrated systems of assessment across comprehensive domains.

For more information, please see *http://www.nichd.nih.gov/crmc/cdb/Kyle-workshop.pdf.*

3. NIMH Young Child Assessment Program

The National Institute of Mental Health Young Child Assessment Program convened a panel of multidisciplinary researchers in May, 2003 to examine current assessment approaches for young children's mental health. The meeting was co-sponsored by ACF. Various perspectives were presented including dimensional, diagnostic, clinical and epidemiological approaches of emotional regulation and attention; externalizing behaviors; and co-occurring language and other related developmental problems. The goals of the meeting were to present an overview of the current issues in the field and discuss opportunities for collaboration and research program development for young children. For more information, *see http://wwwntb.nimh.nih.gov/research/consortyoung.cfm.*

C. Priorities

Based on the extensive work on research design and measurement issues relevant to studying Head Start children and families described above, ACF has identified a series of targeted programmatic and research needs in the measurement domain. Successful applications under this announcement will focus on one or more of the following domains of interest. For child measures: Cognitive development, language development, early literacy, phonemic awareness, mathematics,

social and emotional development, health, physical development, and approaches to learning. For parent/caregiver-child measures: Directly observed measures of the parent-child relationship, as well as measures of other key caregiver/child relationships.

Successful applications under this announcement will provide plans for the development and dissemination of products that are useful for research and/or program self-evaluation, in manualized form and inclusive of training and technical assistance provisions. Measures developed under this announcement are governed by the terms of 45 CFR part 74.36 regarding subsequent sale and distribution. An important element of this announcement is the requirement that researchers demonstrate a partnership or partnerships with Head Start or Early Head Start programs as part of the development, piloting, refinement, training, and use of measures.

Special priorities include the following areas of interest:

- Measures designed, adapted, or validated for use with the general Head Start and Early Head Start populations, or measures spanning the age range 0–5;
- Measures designed, adapted, or validated for use with under-served Head Start and Early Head Start populations such as English Language Learners, American Indian/Alaska Natives, and Migrant and Seasonal children and families;
- Abbreviated forms of standardized measures, with adequately documented psychometric properties and full validation;
- Measures designed to be used by Head Start program staff, with appropriate training;
- Measures related to under-developed domains or areas within the current studies of Head Start or Early Head Start populations;
- Measures related to Early Head Start Performance Measurement;
- Measures aligned with state standards and benchmarks at the preschool level, and in the early school grades.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $2,000,000.

Anticipated Number of Awards: ACF anticipates funding 8–12 projects.

Ceiling on Amount of Individual Awards: The Federal share of project costs shall not exceed $200,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed $200,000 per year for the second through third 12-month budget periods.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None specified.

Average Projected Award Amount: None specified.

Project Periods for Awards: Project periods will be up to three years. Initial awards will be for the first one-year budget period. Requests for a second and/or third year of funding within the project period should be identified in the current application (on SF–424A), but such requests will be considered in subsequent years on a noncompetitive basis, subject to the applicant's eligibility status, the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible applicants include the following:

- State controlled institutions of higher education;
- Private institutions of higher education;
- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education;
- Other: Faith-based and community organizations that meet all other eligibility requirements;

Additional Information on Eligibility

A. Eligible applicants are universities, four-year colleges, and not-for-profit institutions on behalf of researchers who hold a doctorate degree or equivalent in their respective fields. The Principal Investigator must conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

B. An important element of this announcement is the requirement that researchers demonstrate a partnership or partnerships with Head Start or Early Head Start programs as part of the development, piloting, refinement, training, and use of measures. The application must contain a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Head Start or Early Head Start Policy Council (*see* Section IV. Application and Submission Information for further details about these letters).

C. The Principal Investigator must agree to attend two meetings each year. The first is an annual grantee meeting which is typically scheduled during the summer or fall of each year and is held in Washington, DC. The second meeting each year alternates between the biennial Head Start National Research Conference in Washington, DC (June 28 to July 1, 2004) and the biennial meeting of the Society for Research in Child Development—SRCD (April, 2005). The budget should reflect travel funds for such purposes.

D. Faith-based and community organizations *that meet all other eligibility criteria* are eligible to apply.

E. Any nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. Any of the following constitutes proof of nonprofit status:

- A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A written statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.
- Any of the items above for a State or national parent organization *and* a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

F. Private, nonprofit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching

There is no matching requirement.

3. Other

All applicants must have Dun & Bradstreet numbers. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal

Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Applications that fail to follow the required format described in Section IV.2. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $200,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address to Request Application Package

The Head Start Research Support Technical Assistance Team, 1 (877) 663–0250, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACF for programmatic questions. You may also email your questions to: opre@xtria.com. Refer to the Funding Opportunity Number: HHS–2004–ACF–OPRE—[Insert # here].

ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start-University Partnerships Measurement Development, 1 (877) 663–0250, E-mail *opre@xtria.com*.

URL to Obtain an Application: Copies of this Program Announcement may be downloaded approximately 5 days after publication in the **Federal Register** at *http://www.acf.dhhs.gov/programs/core/ongoing_research/funding/funding.html*.

Application materials described in Section IV. can be downloaded from the following web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm#apps*.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Format and Organization. Applicants are strongly encouraged to limit their application to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials but not the Standard Federal Forms (*see* list below). Applicants must number the pages of their application beginning with the Table of Contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format, and in the order, presented below:

a. Cover Letter
b. Contact information sheet (*see* details below)
c. Standard Federal Forms
   - Standard Application for Federal Assistance (form 424)
   - Budget Information—Non-construction Programs (424A)
   - Certifications Regarding Lobbying
   - Disclosures of Lobbying Activities (if necessary)
   - Certification Regarding Environmental Tobacco Smoke
   - Assurance Regarding Non-construction Programs (form 424B)
   - Assurance Regarding Protection of Human Subjects
d. Table of Contents
e. Project Narrative Statement (*see* details below)
f. Appendices
   - Proof of Nonprofit Status (*see* Section V.1.F)
   - Letter(s) of agreement with Head Start program(s) (*see* details below)
   - Letter(s) of agreement with Head Start Policy Council(s) (*see* details below)
   - Curriculum Vitae for Principal Investigators

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. ACF will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm*.

Content of Contact Information Sheet: The contact information sheet should include complete contact information, including addresses, phone and fax numbers, and e-mail addresses, for the Principal Investigator(s) and the institution's grants/financial officer (person who signs the SF–424).

Content of Project Narrative Statement: The project narrative should be carefully developed in accordance with ACF's research goals and agenda as described in the Purpose, Background, and Priorities of this funding opportunity, and the structure requirements listed in Section V. Application Review Information. Please *see* Section V.1. Criteria for instructions on preparing the project summary/abstract and the full project description.

Content of Letters of Agreement: For research conducted with Head Start, the application must contain (A) an original copy of a letter from the Head Start or Early Head Start program certifying that they have entered into a research partnership with the applicant and (B) a separate letter certifying that the application has been reviewed and approved by the local Head Start Program Policy Council. Certification of approval or pending approval by the Policy Council must be an original letter from the official representative of the Policy Council itself.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on June 1, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o Dixon Group, Inc., Attention: Head Start University Partnerships Measurement Development, 118 Q Street NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mails service, or in other rare cases. Determinations to extend or waive deadline requirements rest with the ACF Chief Grants Management Officer.

Due date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, *ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date.* This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or e-mail: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do *not* include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or e-mail: *opre@xtria.com.*

The table below provides additional detail about the standard Federal forms that need to be submitted, including what information is required on them, where these forms can be found, and when they must be submitted.

What to submit	Required content	Required form or format	When to submit
Standard Application form Federal Assistance (form SF 424).	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Budget Information—Nonconstruction Programs (form SF 424A).	Must be filled out completely and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification Regarding Lobbying ...	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Disclosure of Lobbying Activities (SF LLL).	If necessary (see Certification Regarding Lobbying) must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Disclosure of Lobbying Activities (SF LLL).	If necessary (see Certification Regarding Lobbying), must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification Regarding Environmental Tobacco Smoke.	Copy must be enclosed with application (signing and submitting the proposal certifies its content).	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Assurance Regarding Non-construction Programs (form SF 424B).	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Assurance Regarding Protection of Human Subjects.	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms:

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms''

titled ''Survey for Private, Nonprofit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodation or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. A current list of the Single Points of Contact (SPOCs) for each State and Territory is posted at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc. html.*

5. Funding Restrictions

A. Pre-award costs are not allowable.

B. The applicant is strongly encouraged to apply the University's or nonprofit institution's off campus research rates for indirect costs.

6. Other Submission Requirements

Electronic Address to Submit Applications: *www.Grants.Gov.*

Electronic Submission: Please see Section IV.2. Content and Form of Application Submission for guidelines and requirements when submitting applications electronically.

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o Dixon Group, Inc., Attention: Head Start-University Partnerships Measurement Development, 118 Q Street NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (EST), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Due Date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, *ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date.* This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do *not* include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or E-mail: *opre@xtria.com.*

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004. An agency may 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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and

other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

A. Project Summary/Abstract

Provide a summary of the project description (one page or less) with reference to the funding request.

B. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support from concerned parties other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

C. Results and Benefits Expected

Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

D. Approach

Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

E. Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives, and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. Additional Information

Following are requests for additional information that need to be included in the application:

1. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission.

The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate; or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

3. Letters of Support

Provide statements from the community, public and commercial leaders that support the project proposed for funding. All documents must be included inthe application at the time of submission.

G. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified in the Budget Information

form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following are guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or Principal Investigator. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops must be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative

of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

Competitive Criteria for Reviewers: Measurement Development for Head Start Children and Families—The three criteria areas that follow will be used to review and evaluate each application. Address each in the Project Narrative Section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. (100 points total).

Approach: 45 points

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which the development of direct measures of child outcomes in the comprehensive domains of school readiness or direct measures of parent/caregiver-child interaction are the major focus of the study.
- The extent to which the planned research specifies the measures to be used, their psychometric properties, and an adequately detailed proposed set of analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study and the population to be studied, including their appropriateness for low-income and culturally and linguistically diverse children and families served by Head Start.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the art.
- The extent to which the analytic techniques are appropriate for the questions under consideration.
- The extent to which the proposed sample size is sufficient for the study, including the size of particular subgroups of interest and taking into consideration mobility and attrition, over time.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Head Start program.
- The extent to which the planned approach includes techniques for successful transfer of the measures to an additional site or sites.
- The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

Staff and Position Data: 35 Points

- The extent to which the Principal Investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The Principal Investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.
- The adequacy of the time devoted to this project by the Principal Investigator and other key staff in order to ensure a high level of professional input and attention.

Results or Benefits Expected: 20 Points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the intervention and for its evaluation, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the proposal contains a dissemination plan that encompasses both professional and practitioner-oriented products in manualized form and inclusive of training and technical assistance provisions.

2. Review and Selection Process

Each application will undergo an eligibility and conformance review by Federal staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

The competitive review will be conducted in the Washington, DC metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of early childhood education and intervention research, early learning, child care, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

OPRE will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Director of OPRE.

The Director of OPRE, in consultation with the Commissioner of the Administration on Children, Youth, and Families (ACYF), will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations. The Director may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

VI. Award Administration Information

1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing by ACF.

2. Administrative and National Policy Requirements

All applicants are responsible for conforming to the United States Executive Branch Code of Federal Regulations (*http://www.gpoaccess.gov/cfr/index.html*). The following regulations have been identified as having particular relevance for ACF grants: 45 CFR Parts 74 and 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: (SF–269 long form) Semi-annually and a final report is due 90 days after the end of the grant period. Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

VII. Agency Contacts

1. Program Office Contact: ACYF Operations Center/OPRE Grant Review Team/ Xtria, LLC, c/o Dixon Group, Inc., 118 Q Street NE., Washington, DC 20002–2132, Attention: Head Start University Partnerships Measurement Development, 1 (877) 663–0250, e-mail *opre@xtria.com.*

2. Grants Management Office Contact: Sylvia Johnson, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447, 1 (202) 260–7622, e-mail: *sjohnson@acf.hhs.gov.*

VIII. Other Information

Applicants under this announcement are advised that subsequent sale and distribution of products developed under this grant will be subject to the Code of Federal Regulations, title 45, part 74 or part 92.

The use of secondary data analysis in order to refine and validate newly-developed measures in relation to already standardized measures is strongly advised.

Definitions:

Budget Period—for the purposes of this announcement, budget period means the 12-month period of time for which ACF funds are made available to a particular grantee (*e.g.*, beginning on September 16, 2004, and ending on September 15, 2005).

Project Period—for the purposes of this announcement, project period means the 36-month period starting by September 2004, and ending by September, 2007.

Dated: March 26, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research and Evaluation

[FR Doc. 04–7259 Filed 3–31–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Graduate Student Research Grants

Federal Agency Contact Name: Administration for Children and Families (ACF) & Office of Planning, Research and Evaluation (OPRE).

Funding Opportunity Title: Head Start Graduate Student Research Grants.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OPRE–YD–0004.

CFDA Number: 93.600.

Due Date for Letter of Intent (Encouraged): 3 weeks prior to June 1, 2004.

Due Date for Applications (Required): The due date for receipt of applications is: June 1, 2004.

I. Funding Opportunity Description

Funds are provided for Graduate Student Research Grants to Support field-initiated research activities.

This grant program is part of a larger Head Start research effort. Three other grant funding mechanisms are being offered concurrently with the one described in this announcement. They include: (1) Head Start Graduate Student Research Partnership Development Grants, (2) Head Start-University Partnerships: Measurement Development for Head Start Children and Families, and (3) American Indian-Alaska Native Head Start-University Partnerships. For more information, please see these other Head Start Research announcements listed in the **Federal Register** or listed on *www.Grants.Gov,* or send an inquiry to the email address listed above.

Funding for this grant program is shared with the Head Start Graduate Student Research Partnership Development Grants. Relative funding for the two is contingent upon the results of the review process.

Priority Area: Head Start Graduate Student Research Grants

A. Purpose

The purpose of this announcement is to report the availability of funds for Head Start Graduate Student Research Grants to support field-initiated research activities in partnership with Head Start programs.

B. Statutory Authority

Section 649 of the Head Start Act, as amended by the Coats Human Services Reauthorization Act of 1998 (Pub. L. 105–285) and 42 U.S.C. 9844.

C. Background

Since 1991, ACF has explicitly supported the relationship between established Head Start researchers and their graduate students by awarding research grants, on behalf of specific graduate students, to conduct research in Head Start communities. As many previously funded Head Start graduate students have continued to make significant contributions to the early childhood research field as they have pursued their careers, this funding mechanism is an important research capacity-building effort.

To ensure that future research is responsive to the changing needs of low-income families, graduate students need strong and positive role models. Therefore, Head Start's support of the partnership between students and their mentors is essential. The unique partnership that is forged between mentor and student within the Head Start research context serves as a model for the establishment of other partnerships within the community (*e.g.*, researcher-Head Start staff, researcher-family, *etc.*). This foundation helps foster the skills necessary to build a graduate student's trajectory of successful partnership-building and contributions to the scientific community. Within this nurturing and supportive relationship, young researchers are empowered to become autonomous researchers, learning theory, as well as the process of interacting with the various members and relevant organizations within their communities.

Thus, the goals of the Head Start Graduate Student Research Grant program can be summarized as follows:

1. Provide direct support for graduate students as a way of encouraging the conduct of research with Head Start populations, thus contributing to the knowledge base about the best approaches for delivering services to diverse, low-income families and their children;

2. Promote mentor-student relationships that support students' graduate training and professional development as young researchers engaged in policy-relevant, applied research;

3. Emphasize the importance of developing true working research partnerships with Head Start programs and other relevant entities within the community, thereby fostering skills necessary to build a student's trajectory of successful partnership-building and contributions to the scientific community; and

4. Support the active communication, networking and collaboration among graduate students, their mentors and other prominent researchers in the field, both during their graduate training, as well as into the early stages of their research careers.

While the specific topics addressed under these Graduate Student Research Grants are intended to be field-initiated, applicants who address issues of both local and national significance will be most likely to succeed. Some illustrative examples of such topics include, but are not limited to, the areas of school readiness, children's mental health, serving an increasingly culturally and linguistically diverse population of children and families, and promoting child well-being by strengthening responsible fatherhood and healthy marriages in Head Start families.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: $200,000.

Anticipated Number of Awards: ACF anticipates funding 4–10 projects.

Ceiling on Amount of Individual Awards: $20,000 (per year).

The Federal share of project costs shall not exceed $20,000 for the first 12-month budget period inclusive of indirect costs, and shall not exceed $20,000 per year for the second 12-month budget period.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: None specified.

Average Projected Award Amount: None specified.

Project Periods for Awards

Project periods will be up to two years. Initial awards will be for the first one-year budget period. Requests for a second year of funding within the project period should be identified in the current application (on SF–424A), but such requests will be considered in subsequent years on a noncompetitive basis, subject to the applicant's eligibility status, the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible Applicants Include the Following

- State controlled institutions of higher education
- Private institutions of higher education
- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
- Other: Faith-based and community organizations that meet all other eligibility requirements

Additional Information on Eligibility

A. Eligible Applicants are institutions of higher education on behalf of *doctoral-level graduate students.* Doctoral students must have completed their Master's Degree or equivalent in the field of doctoral study and submitted formal notification to ACF by *August 1, 2004.*

B. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. Faith-based and community organizations *that meet other eligibility requirements* are also eligible to apply.

C. Although the faculty mentor is listed as the Principal Investigator and must be committed to taking a central role in maintaining an ongoing research partnership with a Head Start program, this grant is intended for dissertation research for an individual student. Information about both the graduate student and the student's faculty mentor is required as part of this application.

D. The graduate student applicant must agree to attend *two* meetings each year of the grant. The budget should reflect travel funds for such purposes. The first meeting consists of the annual meeting for all Head Start Graduate Student grantees. This annual grantee meeting is typically scheduled during the summer or fall of each year and is held in Washington, DC. It is anticipated that the fall 2004 meeting will be held in late October. During this meeting, each student typically presents a brief overview of his or her study (*e.g.*, the study design, participants, measures, challenges and successes during implementation, and/or findings, as they become available). The intended goal of the meeting is to stimulate potentially useful and constructive feedback from other students and mentors, as well as to facilitate collaboration, networking and mentoring activities.

The second meeting each year alternates between the biennial Head Start National Research Conference in Washington, DC (June 28 to July 1, 2004) and the biennial meeting of the Society for Research in Child Development–SRCD (April, 2005). At a minimum, students usually are provided the opportunity to present information on their respective studies in a poster session format, although both meetings also provide other networking and mentoring activities. The grant budget should reflect travel and housing funds for the graduate student for all four of these meetings (or two if only applying for one year of funding).

E. Given the strong emphasis that is placed on supporting the mentor-student relationship, it is crucial that the faculty mentors attend and actively participate in the activities of the annual grantee meeting for all Head Start Graduate Students. The budget should reflect travel funds for such purposes, as appropriate. However, if the faculty mentor does plan to attend the annual Graduate Student grantee meeting, but will utilize another source of travel funds, such arrangements are encouraged and should be clearly noted in the application.

F. A university faculty member must serve as a mentor to the graduate student; this faculty member is listed as the ''Principal Investigator.'' The application must include a letter from this faculty member stating that s/he has reviewed and approved the application, affirming the status of the project as dissertation research and the student's status in the doctoral program, and describing how the faculty member will regularly monitor the student's work.

G. The Principal Investigator must have a doctorate or equivalent degree in the respective field, conduct research as a primary professional responsibility, and have published or have been accepted for publication in the major peer-reviewed research journals in the field as a first author or second author.

H. An important element of this announcement is the requirement that researchers demonstrate a partnership or partnerships with Head Start or Early Head Start programs as part of the development, piloting, refinement, training, and use of measures. The application must contain a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Head Start or Early Head Start Policy Council (see **Section IV. Application and Submission Information** for further details about these letters).

I. The research project must be an independent study conducted by the individual graduate student or well-defined portion(s) of a larger study currently being conducted by a faculty member. If the project is part of a larger

research effort, the proposal must clearly distinguish between the student's portion of the research activities and those of the larger project. The graduate student must have primary responsibility for the proposed study described in the application.

J. If the graduate student, on whose behalf the university is applying, expects to receive his/her degree by the end of the first one-year budget period, the applicant should request a one-year project period only. A second year budget-period will not be granted if the student has graduated by the end of the first year.

K. The graduate student must write the application in its entirety, consistent with the format and style guidelines of the *Publication Manual of the American Psychological Association, 5th ed.* (APA 2001) and the general principles and guidelines of the *Ethical Principles of Psychologists and Code of Conduct 2002* (APA, 2002).

L. Any nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. Any of the following constitutes proof of nonprofit status:

- A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A written statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status.
- Any of the items above for a State or national parent organization *and* a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

M. Private, nonprofit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

2. Cost Sharing or Matching

There is no matching requirement.

3. Other

All applicants must have Dun & Bradstreet numbers. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications that fail to follow the required format described in *Section IV.2. Content and Form of Application Submission* will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the $20,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

It is unlikely that any individual mentor will be funded for more than one graduate student research grant if there are at least 10 applications from different mentors/institutions that qualify for support.

IV. Application and Submission Information

1. Address To Request Application Package

The Head Start Research Support Technical Assistance Team, 1 (877) 663–0250, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACF for programmatic questions. You may also e-mail your questions to: *opre@xtria.com.* Refer to the Funding Opportunity Number: HHS–2004–ACF–OPRE–[Insert # here]. ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

URL To Obtain an Application

Copies of this Program Announcement may be downloaded approximately 5 days after publication in the **Federal Register** at *http://www.acf.dhhs.gov/programs/core/ongoing_research/funding/funding.html.*

Application materials described in Section IV. can be downloaded from the following Web site: *http://www.acf.hhs.gov/programs/ofs/forms.htm#apps.*

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Format and Organization. Applicants are strongly encouraged to limit their application to 100 pages, double-spaced, with standard one-inch margins and 12 point fonts. This page limit applies to both narrative text and supporting materials but not the Standard Federal Forms (see list below). Applicants must number the pages of their application beginning with the Table of Contents.

Applicants are advised to include all required forms and materials and to organize these materials according to the format, and in the order, presented below:

a. Cover Letter
b. Contact information sheet (see details below)
c. Standard Federal Forms
   Standard Application for Federal Assistance (form 424)
   Budget Information—Non-construction Programs (424A)
   Certifications Regarding Lobbying
   Disclosures of Lobbying Activities (if necessary)
   Certification Regarding Environmental Tobacco Smoke
   Assurance Regarding Non-construction Programs (form 424B)
   Assurance Regarding Protection of Human Subjects
d. Table of Contents
e. Project Narrative Statement (see details below)
f. Appendix
   Proof of Nonprofit Status (see Section

V.1.F)
Curriculum Vitae for Student and Faculty Advisor
Letter of Support from Advisor
Letter(s) of agreement with Head Start program(s) (see details below)
Letter(s) of agreement with Head Start Policy Council(s) (see details below)
Official Transcript of Student Reflecting Graduate Courses

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. ACF will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

Content of Contact Information Sheet: The contact information sheet should include complete contact information, including addresses, phone and fax numbers, and e-mail addresses, for the graduate student applicant, the Principal Investigator(s), and the institution's grants/financial officer (person who signs the SF–424).

Content of Project Narrative Statement: The project narrative should be carefully developed in accordance with ACF's research goals and agenda as described in the Purpose, Background, and Priorities sections of this funding opportunity, and the structure requirements listed in **Section V. Application Review Information.** Please see **Section V.1. Criteria** for instructions on preparing the project summary/abstract and the full project description.

Content of Letters of Agreement: For research conducted with Head Start, the application must contain (A) an original copy of a letter from the Head Start or Early Head Start program certifying that they have entered into a research partnership with the applicant (graduate student) and (B) a separate letter certifying that the application has been reviewed and approved by the local Head Start Program Policy Council. This certification of approval or pending approval by the Policy Council must be an original letter from the official representative of the Policy Council itself.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on June 1, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (e.s.t.), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mails service, or in other rare cases. Determinations to extend or waive deadline requirements rest with the ACF Chief Grants Management Officer.

Due date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, *ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date.* This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do *not* include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or E-mail: *opre@xtria.com.*

The table below provides additional detail about the standard Federal forms that need to be submitted, including what information is required on them, where these forms can be found, and when they must be submitted.

What to submit	Required content	Required form or format	When to submit
Standard Application for Federal Assistance (form SF 424).	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Budget Information—Nonconstruction Programs (form SF 424A).	Must be filled out completely and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Lobbying	Most be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Disclosure of Lobbying Activities (SF LLL).	If necessary (see Certification Regarding Lobbying), must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Environmental Tobacco Smoke.	Copy must be enclosed with application (signing and submitting the proposal certifies its content).	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Assurance Regarding Non-construction Programs (form SF 424B).	Must be signed and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Assurance Regarding Protection of Human Subjects.	Must be filled out completely, signed, and enclosed with application.	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

Additional Forms

Private non-profit organizations may voluntarily submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Nonprofit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodation or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447. A current list of the Single Points of Contact (SPOCs) for each State and Territory is posted at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

A. Pre-award costs are not allowable.

B. Due to the small amount of the grant, the applicant and the applicant's institution are strongly encouraged to waive indirect costs. An authorized representative of the applicant's institution must submit a written acknowledgement that the indirect costs are being waived. In the event that waiving the indirect costs is not possible, the applicant is strongly encouraged to apply the University's or nonprofit institution's off-campus research rates for indirect costs.

C. *Transferability.* Grants awarded as a result of this competition are not transferable to another student or to another institution.

D. *Sharing of Awards.* Awards cannot be divided among two or more students.

6. Other Submission Requirements

Electronic Address to Submit Applications: www.Grants.Gov.

Electronic Submission: Please see *Section IV.2. Content and Form of Application Submission* for guidelines and requirements when submitting applications electronically.

Submission by Mail: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

Applicants are responsible for mailing applications well in advance, when

using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 9 a.m. and 4:30 p.m. (e.s.t.), Monday through Friday (excluding Federal holidays) at the above address. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Due Date for Letters of Intent (Encouraged): 3 weeks prior to June 1, 2004. If you plan to submit an application, *ACF requests you notify us by fax or e-mail at least three weeks prior to the submission deadline date.* This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or email: the number and title of this announcement; the name, address, telephone and fax number, e-mail address of the Principal Investigator(s), the fiscal agent (if known); and the name of the university or nonprofit institution. Do *not* include a description of your proposed project. Send this information to ''The Head Start Research Support Team'' at—Fax: 1 (703) 821–3989 or E-mail: *opre@xtria.com.*

V. Application Review Information

1. Criteria

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004. An agency may 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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

A. *Project Summary/Abstract:* Provide a summary of the project description (one page or less) with reference to the funding request.

B. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support from concerned parties other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

C. *Results and Benefits Expected:* Identify the results and benefits to be derived. For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will families derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

D. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearances may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives, and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used

to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. *Additional Information:* Following are requests for additional information that need to be included in the application:

1. Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. Organizational Profiles: Provide information on the applicant organizations(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission.

The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate; or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

3. Letters of Support: Provide statements from the community, public and commercial leaders that support the project proposed for funding. All documents must be included in the application at the time of submission.

G. *Budget and Budget Justification:* Provide line item detail and detailed calculations for each budget object class identified in the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following are guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or Principal Investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops must be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, *etc.* Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the

simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

Competitive Criteria for Reviewers: Head Start Graduate Student Research Grants—The three criteria areas that follow will be used to review and evaluate each application. Address each in the Project Narrative Section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. (100 points total).

Approach: 40 points

- The extent to which there is a discrete project designed by the graduate student. If the proposed project is part of a larger study designed by others, the approach section should clearly delineate the research component to be carried out by the student and how it is distinguished from the larger research project.
- The extent to which the research design is clearly described, as well as appropriate and sufficient for addressing the questions of the study.
- The extent to which the planned research specifies the measures to be used, their psychometric properties, and contains an adequately detailed description of the proposed analyses to be conducted.
- The extent to which the planned measures have been shown to be appropriate and sufficient for the questions of the study, and the population to be studied.
- The extent to which the planned measures and analyses are consistent with one another, and reflect knowledge and use of state-of-the-art measures and analytic techniques, or advance the state-of-the art, as appropriate.
- The extent to which the data analytic plan is adequately described and that the proposed data analytic techniques are appropriate for the specific research question(s) under consideration.
- The extent to which the proposed sample size is sufficient to answer the range of proposed research questions for the study, especially for longitudinal studies and studies involving *a priori* subgroups of interest.
- The extent to which the scope of the project is reasonable for the funds available and feasible for the time frame specified.
- The extent to which the planned approach reflects sufficient written input from, and partnership with, the Head Start program (including the separate required review and written approval from the Head Start program and the Head Start Program Policy Council).
- The extent to which the budget and budget justification are appropriate for carrying out the proposed project.

Staff and Position Data: 35 Points

- The extent to which the faculty mentor and graduate student possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The Principal Investigator/faculty mentor has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the faculty mentor and graduate student reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start program staff and parents.
- The adequacy of the time devoted to this project by the faculty mentor for mentoring the graduate student. The proposal should include evidence of the faculty mentor's commitment to mentoring the individual graduate student, and as appropriate, willingness to serve as a resource to the broader group of Head Start Graduate Students funded under this award.

Results or Benefits Expected: 25 Points

- The research questions are clearly stated.
- The presentation reflects original work done by the student (consistent with the general principles and guidelines of the *Ethical Principles of Psychologists and Code of Conduct 2002* (APA 2002).
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current, comprehensive, and supports the need for the study.
- The extent to which the literature review has a complete set of reference citations and is written consistent with the guidelines of the *Publication Manual of the American Psychological Association, 5th ed.* (APA 2001).
- The extent to which the questions that will be addressed or the hypotheses

that will be tested are adequately described and sufficient for meeting the stated objectives.

• The extent to which the proposed project is appropriate to the student's level of ability and the stated time frame for completing the project.

2. Review and Selection Process

Each application will undergo an eligibility and conformance review by Federal staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

The competitive review will be conducted in the Washington, DC, metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of early childhood education and intervention research, early learning, child care, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

OPRE will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Director of OPRE.

The Director of OPRE, in consultation with the Commissioner of the Administration on Children, Youth, and Families (ACYF), will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; and (5) other relevant considerations. The Director may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

VI. Award Administration Information

1. Award Notices

Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing by ACF.

2. Administrative and National Policy Requirements

All applicants are responsible for conforming to the United States Executive Branch Code of Federal Regulations *(http://www.gpoaccess.gov/cfr/index.html).* The following regulations have been identified as having particular relevance for ACF grants: 45 CFR parts 74 and 92.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: (SF–269 long form) Semi-annually and a final report is due 90 days after the end of the grant period.

Original reports and one copy should be mailed to: Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

VII. Agency Contacts

1. Program Office Contact

ACYF Operations Center/OPRE Grant Review Team/Xtria, LLC, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, Attention: Head Start Graduate Student Research Grants, 1 (877) 663–0250, E-mail *opre@xtria.com.*

2. Grants Management Office Contact

Sylvia Johnson, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, Washington, DC 20447, 1 (202) 260–7622, E-mail: *sjohnson@acf.hhs.gov.*

VIII. Other Information

Applicants under this announcement are advised that subsequent sale and distribution of products developed under this grant will be subject to the Code of Federal Regulations, title 45, part 74.

The use of secondary data analysis in order to refine and validate newly-developed measures in relation to already standardized measures is strongly advised.

Definitions

Budget Period—for the purposes of this announcement, budget period means the 12-month period of time for which ACF funds are made available to a particular grantee (*e.g.*, beginning on September 16, 2004, and ending on September 15, 2005).

Project Period—for the purposes of this announcement, project period means the 24-month period starting by September 2004, and ending by September, 2006.

Dated: March 26, 2004.

Naomi Goldstein,

Acting Director, Office of Planning, Research, and Evaluation.

[FR Doc. 04–7261 Filed 3–31–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACYF/FYSB 2004/01A]

Notice of Correction for the Mentoring Children of Prisoners Program Announcement

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice of correction.

Funding Opportunity Title: Mentoring Children of Prisoners.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CU–0001.

SUMMARY: This notice is to inform interested parties of corrections made to the Mentoring Children of Prisoners Program Announcement published on Monday, February 23, 2004. The following corrections should be noted:

(1) Under DEFINITIONS, Children of Prisoner—The third sentence should read as follows: Children of persons incarcerated in local facilities become eligible for the mentoring program only in the unfortunate instance that the parent is remanded to the custody of the state department of corrections or the federal correctional system.

(2) Under DEFINITIONS, Prisoner—The sentence should read as follows: Adult who is incarcerated in a Federal or state correctional facility or is being held in a local facility but is remanded to the custody of the state department of corrections or federal correctional system.

(3) Under AWARD INFORMATION—Ceiling on amount of individual Awards should read as follows: $5,000,000.

(4) Under ADDITIONAL INFORMATION ON ELIGIBILITY—The second and third to last sentences should read as follows: Applicants are cautioned that the ceiling for individual awards is $5,000,000. Applications exceeding the $5,000,000 federal request threshold will be returned without review.

(5) Under ADDITIONAL INFORMATION ON ELIGIBILITY, Cost Sharing or Matching—The first sentence should read as follows: For the first and second years of the grant, federal funds will pay 75% of the total project budget and grantees must pay at least 25% of

the total project budget (Federal + Non-Federal = Total Project Budget).

(6) Under ADDITIONAL INFORMATION ON ELIGIBILITY, Other (if applicable)—The second to last sentence should read as follows: Applications exceeding the $5,000,000 federal request threshold will be returned without review.

(7) Under PROGRAM GUIDANCE—The last sentence should read as follows: Applicants are cautioned that the ceiling for individual awards is $5,000,000.

(8) Under APPLICATION AND SUBMISSION INFORMATION, Funding Restrictions—The two sentences should read as follows: Applicants are cautioned that the ceiling for individual awards is $5,000,000. Applications exceeding the $5,000,000 federal request threshold will be returned without review.

The only changes to the Mentoring Children of Prisoners Program Announcement are explicitly stated in this Notice of Correction. All applications must still be sent on or before the deadline date of April 23, 2004. Applications must be mailed or delivered to: ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations center at the above phone number or address.

Dated: March 11, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–7263 Filed 3–31–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Brain Power! The NIDA Junior Scientist Program and the Companion Program, Brain Power! Challenge

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for the opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Brain Power! The NIDA Junior Scientist Program, for grades K–5, and the companion program for Middle School, the Brain Power! Challenge. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This is a request is for a three-year clearance to evaluate the effectiveness of the Brain Power! Program's ability (1) increase children's knowledge about the biology of the brain and the neurobiology of drug addiction, (2) increase positive attitudes toward science, careers in science, science as an enjoyable endeavor, and the use of animals in research; and stimulate interest in scientific careers; and (3) engender more realistic perceptions of scientists as being from many races, ages, and genders. The secondary goals of the evaluation are to determine the Program's impact on attitudes and intentions toward drug use. The findings will provide valuable information concerning the goals of NIDA's Science Education Program of increasing scientific literacy and stimulating interest in scientific careers. In order to test the effectiveness of the evaluation, information will be collected from students before and after exposure to the curriculum with pre- and post-test self-report measures. Surveys will also be administered to teachers after the completion of the program to examine ease and fidelity of implementation, as well as impact in knowledge and understanding of the neurobiology of addiction. Surveys will be administered to parents to obtain parental reaction and opinion on the materials and the degree to which parents find the curriculum informative and appropriate.

Frequency of Response: On occasion. *Affected Public:* Elementary and middle school students, teachers, and parents. *Type of Respondents:* Students, teachers, and parents. The reporting burden is as follows: *Estimated Number of Respondents:* 1,337; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours Per Response:* .5; *Estimated Total Annual Burden Hours Requested:* 1,254.5. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Students (K–grade 5)	640	2	.5	640
Students (grades 6–9)	560	2	.5	560
Parents (K–grade 5)	56	1	.25	14
Parents (grades 6–9)	56	1	.5	28
Teachers	25	1	.5	12.5
Total	1,337			1,254.5

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Cathrine Sasek, Coordinator, Science Education Program, Office of Science Policy and

Communications, National Institute on Drug Abuse, 6001 Executive Blvd, Room 5237, Bethesda, MD 20892, or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or by e-mail to *csasek@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: March 26, 2004.

Laura Rosenthal,

Associate Director for Management, National Institute for Drug Abuse.

[FR Doc. 04–7335 Filed 3–31–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 National Heart, Lung, and Blood Advisory Council.

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 in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The other and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the other, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 13, 2004.

Open: 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the *Contact Person* listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7334 Filed 3–31–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Scientist Development Award for New Minority Faculty—Part 2.

Date: March 30, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SRV A&D SEP 2

Date: April 1, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216. *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 25, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7333 Filed 3–31–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Knowledge Dissemination Conference Grants Program Announcement (Short Title: SAMHSA Conference Grants) PA 05–001

Authority: Sections 520A, 516 and 509 of the Public Health Service Act, as amended and subject to the availability of funds.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

SUMMARY: The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services

(CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) are accepting applications for Knowledge Dissemination Conference Grants (also known as SAMHSA Conference Grants). The purpose of the Conference Grant program is to disseminate knowledge about practices within the mental health services and substance abuse prevention and treatment fields and to integrate that knowledge into real-world practice as effectively and efficiently as possible.

DATES: SAMHSA anticipates that there will be two cycles of awards each year. Applications must be *received* by January 10 for the first review cycle and September 10 for the second review cycle. Applications are due by close of business on January 10 and September 10. If the receipt date falls on the weekend, it will be extended to the following Monday.

FOR FURTHER INFORMATION CONTACT:

For questions on mental health topics, contact: David Morrissette, DSW, Center for Mental Health Services/SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653, E-mail: *dmorriss@samhsa.gov.*

For questions on substance abuse treatment topics, contact: Kim Plavsic, Center for Substance Abuse Treatment/SAMHSA, 5515 Security Lane, Suite 740, Rockville, MD 20852, (301) 443–7916, E-mail: *kplavsic@samhsa.gov.*

For questions on substance abuse prevention topics, contact: Rosa I. Merello, Ph.D., Public Health Advisor, Center for Substance Abuse Prevention/SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, Phone: (301) 443–7462, E-mail: *remerello@samhsa.gov.*

For questions on grants management issues, contact: Kathleen Sample, Office of Program Services, Grants Management Branch/SAMHSA, 5600 Fishers Lane/Rockwall II, Room 630, Rockville, MD 20857, (301) 443–9667, E-mail: *ksample@samhsa.gov.*

SUPPLEMENTARY INFORMATION:

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Knowledge Dissemination Conference Grants Program Announcement

(Short Title: SAMHSA Conference Grants)

[Announcement No. PA 05–001]

[Modification: reissuance of PA 03–002]

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243

Authority: Sections 520A (Priority Mental Health Needs of Regional and National Significance), 516 (Priority Substance Abuse Prevention Needs of Regional and National Significance) and 509 (Priority Substance Abuse Treatment Needs of Regional and National Significance) of the Public Health Service Act, as amended, and subject to the availability of funds

Key Dates

Application Deadline.	Applications are due on the recurring dates of January 10 and September 10 each year.
Intergovernmental Review.	(E.O. 12372) Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.

*This program is being announced prior to the full annual appropriation for fiscal year (FY) 2005 for the Substance Abuse and Mental Health Services Administration's (SAMHSA) programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2005 to permit funding of a reasonable number of applications being hereby solicited. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. Questions regarding the status of the appropriation of funds should be directed to the Grants Management Officer listed under Contacts for Additional Information in this announcement.

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I. Funding Opportunity Description

1. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) are accepting applications for SAMHSA Knowledge Dissemination Conference Grants (also referred to as SAMHSA Conference Grants). The purpose of the Conference Grant program is to disseminate knowledge about practices within the mental health services and substance abuse prevention and treatment fields and to integrate that knowledge into real-world practice as effectively and efficiently as possible. SAMHSA's conference grants are authorized by sections 520A, 516, and 509 of the PHS Act.

SAMHSA Centers (CMHS, CSAP, and CSAT) will provide support for up to 75 percent of the total direct costs of planned meetings and conferences. Grant awards range from $25,000 to a maximum of $50,000 for a 12-month project period.

2. Expectations

As the Federal agency charged with improving the quality and availability of substance abuse and mental health prevention, treatment, and rehabilitative services, SAMHSA has developed programs to put research findings into practice by bringing new science-based knowledge to community-based prevention, identification, and treatment of mental and addictive disorders. Conferences provide an expeditious and efficient method to disseminate knowledge to a wide audience and promote the transfer of knowledge into practice.

Under this announcement, applications are invited for support of conferences related to substance abuse (including abuse of alcohol, tobacco, and illicit drugs) and mental illness prevention, early intervention, and treatment innovations and service delivery.

A conference is a regional workshop or any other organized and formal meeting lasting 1 or more days where persons assemble to exchange information about the science and practice of substance abuse and/or mental health identification, treatment, and prevention. Conferences must be open to a broad constituency of interests

and skills that include providers, practitioners, researchers, advocates, consumers, family members, and the general public.

Conferences that focus on a single audience, such as training sessions for volunteers or practitioners, or seminars for researchers, do not fit these requirements.

SAMHSA, through its Centers, supports conferences that address the following programmatic priorities and principles:

Programmatic Priorities:

1. Co-occurring disorders.
2. Substance abuse treatment capacity.
3. Seclusion and restraint.
4. Strategic prevention framework.
5. Children and families.
6. Mental health system transformation.
7. Disaster readiness and response.
8. Homelessness.
9. Aging.
10. HIV/AIDS and hepatitis.
11. Criminal justice.

Priority Principles:

1. Science to services/evidence-based practices.
2. Data for performance measurements and management.
3. Collaboration with public and private partners.
4. Recovery/reducing stigma and barriers to services.
5. Cultural competency/eliminating disparities.
6. Community and faith-based approaches.
7. Trauma and violence (*e.g.*, physical and sexual abuse).
8. Financing strategies and cost-effectiveness.
9. Rural and other specific settings.
10. Workforce development.

Each of the SAMHSA Centers maintains responsibility for and makes funding decisions regarding conferences in its respective areas of expertise:

2.1 Center for Mental Health Services

The Center for Mental Health Services (CMHS) plays a pivotal role as an agent of change in the field of mental health, working in partnership with other Federal agencies, State and local mental health authorities, service providers, consumers of services, and their families. It is guiding a service system in transition, stimulating the capacity of its partners to improve and enhance mental health treatment, illness prevention, and support services, placing them within reach of all Americans in need. To this end, CMHS develops new strategies and highlights effective practices using an array of the latest research-based treatments and support services. The Center's national programs promote the integration of relevant, culturally appropriate community services, opening the door to a comprehensive service system for those who need continuing intervention. Such integrated services are especially important for children and adolescents with serious emotional disturbances and adults with serious mental illness, including those involved in the criminal justice system, those with co-occurring substance abuse disorders, and those who are homeless.

In FY 2005, CMHS will reserve $200,000 in funds to support conferences related to the prevention of mental and behavioral disorders. Applications received September 10, 2004 and January 10, 2005 will be considered for funding during the FY 2005 fiscal year. Examples of prevention related topics include:

- Early intervention for people with mental and behavioral disorders;
- Suicide prevention;
- Childhood trauma;
- Youth violence prevention;
- Women's issues;
- Rural mental health;
- Racial and ethnic disparities; and
- Emergency mental health services.

Conference goals related to prevention topics may include any of the following:

- The exchange and dissemination knowledge of evidence-based programs/best practices guidelines;
- Development of strategies for effective partnerships and collaborations at the local, regional, national, and international levels;
- Development of a competent workforce; and
- Policy development and the synthesis of innovative ideas and concepts into effective system designs.

2.2 Center for Substance Abuse Prevention

The mission of the Center for Substance Abuse Prevention (CSAP) is to bring effective substance abuse prevention to every community. That mission will be accomplished through the recently developed Strategic Prevention Framework, which incorporates SAMHSA's goals of Accountability, Capacity, and Effectiveness. The objectives of the Strategic Prevention Framework are to increase substance abuse prevention programming throughout the United States; to support the implementation of effective substance abuse prevention programs in the States and communities; and to promote the use of performance measures and evaluation tools by substance abuse prevention providers. Through the Strategic Prevention Framework, CSAP builds capacity within the States and the prevention field to promote resiliency and decrease risk factors in individuals, families and communities.

The Strategic Prevention Framework incorporates a five step community development model: (1) Organize the community to profile needs, including community readiness; (2) mobilize the community and build the capacity to address needs and plans for sustainability; (3) develop the prevention action (evidence-based activities, programs, strategies, and policies); (4) implement the prevention plan; and (5) conduct ongoing evaluation for quality improvement and outcomes.

Within this conceptual framework, CSAP provides leadership and support to the Nation's substance abuse prevention activities by bringing knowledge on effective substance abuse prevention to every community, and promoting the implementation of evidence-based substance abuse prevention practices to achieve the goals of reducing risk factors and enhancing protective factors. CSAP's efforts help to reduce the number of people that will ultimately need treatment for addiction by deterring individuals from ever using drugs, by delaying the age of onset, and intervening to keep them from increasing their drug use. Through these efforts, CSAP contributes to the overall national effort, as articulated in one of the three priorities of the National Drug Control Strategy, to reduce the current use of illegal drugs among those aged 12 years or older by 10 percent in 2 years and by 25 percent in 5 years. For this reason, CSAP is interested in disseminating knowledge about the applicability of evidence-based programs and practices to the substance abuse prevention field.

2.3 Center for Substance Abuse Treatment

The Center for Substance Abuse Treatment (CSAT) was created by Congress to expand the availability of effective treatment and recovery services for alcohol and drug problems. This is reflected in CSAT's mission of improving the health of the nation by bringing effective alcohol and drug treatment to every community. CSAT works cooperatively across the private and public treatment spectrum to identify, develop, and support policies, approaches, and programs that enhance and expand treatment. CSAT's initiatives are based on services and the consensus of experts in the addiction treatment field that, for most individuals, treatment and recovery

work best in the context of a community-based coordinated system of comprehensive services designed to assure a continuum of support for recovery. CSAT supports the Nation's treatment infrastructure in providing an array of gender-specific and culturally appropriate services, evaluating the effectiveness of treatment and the delivery of services, and continually utilizing evaluation results to reformulate treatment, recovery, and service delivery approaches.

In addition to SAMHSA priorities listed above, CSAT is particularly interested in conferences that focus on substance abuse treatment in relationship to: pharmacologic treatment of opioid addiction; emerging issues (*e.g.*, OxyContin, methamphetamine, buprenorphine, etc.); workforce development; stigma reduction; employment of persons in recovery; financing; confidentiality/privacy; and mandated treatment.

2.4 Cultural Competence

Providing quality substance abuse prevention, addiction treatment, and mental health services to people from different cultures is the cornerstone of SAMHSA's efforts to promote health among diverse populations. SAMHSA believes these services are most effective when provided with consideration for the culture, values, and traditions of the individuals and communities being served, taking into account issues of race/ethnicity, gender, age, language, sexual orientation, disability, and literacy.

For these reasons, SAMHSA supports and upholds the concepts of cultural competence in the development and day-to-day implementation of all its programs. SAMHSA defines cultural competence as a set of behaviors, skills, attitudes, and policies that promote awareness, acceptance, and respect for differences among people. Cultural competence extends to continuing efforts, by both programs and individuals, to enhance their knowledge of other cultures, and to develop flexible models of service delivery that can be easily adapted to meet the evolving/emerging needs of diverse populations.

Complete SAMHSA guidelines for cultural competence are available on SAMHSA's Web site (*http://www.samhsa.gov,* click on ''Grant Opportunities'' and choose the option for ''Useful Information for Grant Applicants''). For more information on cultural competence, *see* (1) The Surgeon General's Supplement, *Mental Health: Culture, Race, and Ethnicity* (DHHS, 2001); (2) *Cultural Competence Standards in Managed Care Mental Health Services: Four Underserved/Under-represented Racial/Ethnic Groups, 2000;* (3) *Cultural Issues in Substance Abuse Treatment* (BKD# 323). To obtain copies of the first and second articles, call the National Mental Health Information Center at (800) 789–2647, or visit the CMHS Web site at *http://www.mentalhealth.org.* To obtain a copy of the third article, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at (800) 729–6686.

2.5 Family and Consumer Involvement

SAMHSA believes that families and consumers contribute significantly to successful outcomes and must be appropriately involved in the conceptualization, planning, implementation, and evaluation of SAMHSA projects. Therefore, SAMHSA is committed to funding projects that are culturally competent, gender sensitive, age appropriate, and customer driven (family and consumer) in their approaches.

3. *Required Activities*

As a condition of accepting a SAMHSA Conference Grant award and in conducting activities to achieve the purpose of this program, the recipient will be responsible for and must agree to the following requirements.

1. Use SAMHSA's name only in factual publicity for the conference. SAMHSA involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.

2. Hold the conference in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speakers' fees, agenda composition, and printing). These items may be developed in concert with assigned SAMHSA project personnel. SAMHSA and/or the pertinent Center shall have the opportunity to speak, exhibit, and/or distribute informational material at the conference, if appropriate. No registration fees will be charged to SAMHSA/Center staff.

4. Provide draft copies of the agenda and proposed ancillary activities to SAMHSA for approval. All but 50 percent of the total funds awarded for the proposed conference will be initially restricted pending approval by SAMHSA of a full, final agenda. The remaining 50 percent of funds will be released by letter to the grantee upon the approval of the final agenda. Because conference support by SAMHSA creates the appearance of SAMHSA co-sponsorship, there will be active participation by SAMHSA in the development and approval of those portions of the agenda supported by SAMHSA funds. SAMHSA funds will not be expended for non-approved portions of conferences. In addition, SAMHSA will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection and site selection. SAMHSA reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

5. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, *etc.*). SAMHSA must review and approve any materials with reference to SAMHSA involvement or support.

6. Manage all registration processes with participants, invitees, and registrants (*e.g.,* travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, *etc.*).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

8. Submit interim and final reports describing the conference, attendance, presentations, speakers, expenditures, and conference evaluation.

9. Submit three copies of any publications resulting from the conference to the Grants Policy Officer (GPO) within 30 days of the date of publication.

4. Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or ''GPRA'') requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3 to 5-year period;
- Set performance targets annually related to their strategic plan; and
- Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, ''GPRA data'') from grantees. You

are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions. In your application, you must demonstrate your ability to collect and report on these measures.

GPRA reporting requirements for SAMHSA's Conference Grants program are as follows:

- Measures for CSAP awardees are expected to include data such as number of attendees, satisfaction with the conference and achievement of conference goals. Applications are expected to include description of the measurements (items) to gather the data indicated above. Measures requirements will be described more fully in the terms and conditions applied to grants awarded by CSAP.
- Measures and instructions for CSAT awardees are specified in Appendix A of this program announcement.
- Measures and instructions for CMHS awardees are specified in Appendix B of this program announcement.

Before grant award, a final agreement regarding data collection will be reached. The terms and conditions of the grant award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

5. Evaluation

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications.

II. Award Information

1. Award Amount

In Fiscal Year (FY) 2005, SAMHSA's three Centers expect to make a total of $1,025,000 available 22–41 conference grants. SAMHSA/CMHS expects to make available $450,000 for 9–18 awards, with $200,000 reserved to support conferences related to the prevention of mental and behavioral disorders. SAMHSA/CSAP expects to make available $75,000 for up to 3 awards. SAMHSA/CSAT expects to make available $500,000 for 10–20 awards. Each of the three Centers will make available a minimum of $75,000 in FY 2006 and beyond, assuming funding is available.

All awards will be for a maximum project period of 12 months.

SAMHSA Centers (CMHS, CSAP, and CSAT) will provide support for up to 75 percent of the total direct costs of planned conferences. The maximum grant award is $50,000. Indirect costs are not allowed under this program. It is expected that 20–30 awards will be made each year under this announcement. Actual awards will depend on the availability of funds.

2. Funding Mechanism

Awards will be made as grants.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; professional associations, voluntary organizations, self-help groups, consumer and provider services-oriented constituency groups; community- and faith-based organizations; and tribal organizations may apply. Individuals are not eligible to receive grant support for a conference. The statutory authority for this program precludes grants to for-profit organizations.

Support for only *one* conference from *one* SAMHSA Center (CMHS, CSAP, CSAT) may be requested in any single application. Only *one* application per receipt date may be submitted.

2. Cost-Sharing

Cost sharing is required. SAMHSA will provide support for up to 75% of the total direct cost of the conference.

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix C of this document.)

1. Address to Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov.* Click on ''grant opportunities.''

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1. Applications that are not submitted on the PHS 5161–1 will be screened out and will not be reviewed.
- Program Announcement (PA)—Provides specific information about the availability of funds along with instructions for completing the grant application. This document is the PA. The PA is available on the SAMHSA Web site (*http://www.samhsa.gov*). A synopsis of the PA is available on the Federal grants Web site (*http://www.grants.gov*) and will be published in the **Federal Register**.

You must use both documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1.

Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a

public/private nonprofit organization getting ready to submit a Federal grant application.

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project (including the date and location of the proposed conference) that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in ''Section V—Application Review Information'' of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through H. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

Section E—Budget Justification, Existing Resources, Other Support.

You must provide a line item budget and specific justification for the project's *direct costs.* (Note that for this grant program there will be no future years; *the project duration is 12 months only.*) For contractual costs, provide a similar yearly breakdown and justification for ALL costs.

Specify all resources needed to accomplish the project that the project will have access to, either through the grant or, as appropriate, through other resources.

(1) *Personnel:* Itemize and prorate salary for professional and nonprofessional staff for the amount of time spent on the project.

(2) *Fringe Benefits:* Itemization may include only funds in proportion to the amount of time or effort employees devote to the project, provided that such costs are incurred under formally established and consistently applied policies of the organization.

(3) Equipment: Grant funds may be used only for rental of necessary equipment; funds may not be used for the purchase of equipment. Itemize rental costs, projection, public address systems, exhibits, phones, *etc.*

(4) *Supplies:* Grant funds may be used for the purchase of supplies necessary for the conference, provided the supplies are received and used during the project period. Itemize stationery, mailing costs, *etc.*

(5) *Travel:* Funds may be used for the travel of staff, speakers, participants, and attendees if identified in the application and approved at the time of award. Proposed per diem or subsistence allowances must be reasonable and will be limited to the days of attendance at the conference plus the actual travel time required to reach the conference location by the most direct route available. Where meals and/or lodgings are furnished without charge or at a nominal cost (*e.g.*, as part of the registration fee), the proposed per diem or subsistence allowance will be reduced to take this into consideration. Transportation costs for attendees and participants at the conference may not exceed economy class airfares. Grant funds may not be used to pay per diem or expenses other than local mileage for local participants in the conference.

(6) *Meals:* Meals are allowable if justified as an integral part of the program (*e.g.*, working lunch when speaker is present). Breaks, snacks, breakfast, dessert receptions, etc., are not allowable.

(7) *Registration Fees:* Registration fees may be paid from grant funds, provided such fees cover only those costs otherwise properly chargeable to the grant.

(8) *Publication Costs:* Grant funds may be used to cover the costs of publishing the conference product (proceedings, manual, monograph, report).

(9) *Consultant Services:* Costs for consultant fees are allowed, including travel and supporting costs (per diem, or where applicable, subsistence).

(10) *Speakers' Fees:* Costs for speakers' fees for services rendered are allowed. However, honoraria (non-speaker) or other payments given for the purpose of conferring distinction, or to symbolize respect or esteem, may not be paid from grant funds.

(11) *Conference Services:* Grant funds may be used for recordings of proceedings, editorial services, simultaneous translation, *etc.*, and subsequent transcriptions.

(12) *All Other Expenses:* Itemize costs for printing programs, notices, badges, signs, *etc.*, and rental of conference space.

(13) *Other Support:* ''Other Support'' refers to all current or pending funds that will be used to plan for, conduct, and evaluate the conference, related to this application. Other support can include registration fees, contributions from any organizations or persons, and in-kind services. Applicant organizations are reminded of the necessity to provide full and reliable information regarding ''other support,'' *i.e.*, all Federal and non-Federal active or pending support. For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. If there are none, state ''none.'' For all active and pending support listed, also provide the following information:

—Source of support (including identifying number and title).
—Dates of entire project period.
—Annual direct costs supported/requested.
—Brief description of the project.
—If the project overlaps, duplicates, or is being supplemented by the present application, delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

Section F—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.
—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.
—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

Section G—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

Section H—Confidentiality and SAMHSA Participant Protection/Human Subjects. Instructions for completing Section H of your application are provided below in Section IV–2.4 of this document.

• Appendices 1 through 3—Do not use more than 30 pages (excluding data collection instruments and interview protocols) for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

—*Appendix 1:* Letters of Collaboration, Support, and/or Agreement to Participate in the Conference.
—*Appendix 2:* Data Collection Instruments/Interview Protocols.
—*Appendix 3:* Sample Consent Forms.

• *Assurances—Non-Constructions programs.* Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the ''Certifications'' forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes ''grass roots'' lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The 30-page limit for Appendices 1 through 3 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection

All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must describe how you will address these requirements or indicate why they do not apply.

In completing this section of your application, limit the discussion of participant protection to the conference itself and its evaluation process.

Participation in the conferences may expose some presenters and attendees to potential risks that come from disclosing personal information or raising uncomfortable issues while discussing mental health and/or substance abuse diagnosis, treatment, or prevention issues. Consumers of these services are particularly vulnerable to the loss of privacy regarding their consumer status.

Confidentiality and Participant Protection

All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must describe how you will address these requirements.

(1) *Protect Clients and Staff from Potential Risks:*

• Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

(2) *Fair Selection of Participants:*

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

(3) *Absence of Coercion:*

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

(4) *Data Collection:*

• Identify from whom you will collect data (*e.g.,* from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.,* school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.,* urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, ''Data Collection Instruments/Interview Protocols,'' copies of *all* available data collection instruments and interview protocols that you plan to use.

(5) *Privacy and Confidentiality:*

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

—How you will use data collection instruments.
—Where data will be stored.
—Who will or will not have access to information.
—How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part 2.

(6) *Adequate Consent Procedures:*

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

—Whether or not their participation is voluntary.
—Their right to leave the project at any time without problems.
—Possible risks from participation in the project.
—Plans to protect clients from these risks.
—Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, ''Sample Consent Forms'', of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.,* consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

(7) *Risk/Benefit Discussion:*

• Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Depending on the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR 46).

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

SAMHSA anticipates that there will be two cycles of awards each year. Applications must be *received* by January 10 for the first review cycle and September 10 for the second review cycle. Applications are due by close of business on January 10 and September 10. If the receipt date falls on the weekend, it will be extended to the following Monday. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

Applicants are urged to apply for funding 1 year in advance of the planned conference.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.*

- Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.
- If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.
- For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857, ATTN: SPOC—Funding Announcement No. PA 05–001.

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21.
- State and Local Governments: OMB Circular A–87.
- Nonprofit Organizations: OMB Circular A–122.
- Appendix E Hospitals: 45 CFR part 74.

SAMHSA Centers (CMHS, CSAP, and CSAT) will provide support for up to 75 percent of the total direct costs of planned conferences.

The maximum grant award is $50,000.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857.

Be sure to include ''SAMHSA Conference Grants—PA 05–001'' and the acronym for the Center (either CMHS, CSAP, or CSAT) to which you are applying in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the ''Program Narrative'' instructions found in the PHS 5161–1.
- Be sure to provide complete references for any literature cited in your Project Narrative. These references should be provided in Section G of the Supporting Documentation.
- You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *http://www.samhsa.gov.* Click on ''Grant Opportunities.''
- The Supporting Documentation you provide in Sections E–H and Appendices 1–3 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Potential Significance of the Proposed Project (35 points)

- Present a brief literature review on the topic area and describe how your conference represents knowledge in the field(s).
- Describe the value of the conference to advance the field of substance abuse and/or mental health prevention, treatment, and rehabilitative services, particularly in reference to culturally and racially diverse populations.
- Describe the relevance of the proposed project to the SAMHSA Programmatic Priorities and Priority Principles found in the Expectations section of this announcement.

Section B: Merit and Appropriateness of the Project Plan (30 points)

- Identify and justify overall goals, objectives, and approach of the conference.
- Discuss the feasibility of the conference agenda.
- Describe the collaboration in the planning, implementation, and evaluation of the conference among all of the following constituencies: consumers, advocates, researchers, and providers. Attach letters of support and/or agreement to participate in the conference in Appendix 1. Identify any cash or in-kind contributions that will be made to this project.
- Explain how your conference will address, develop, and/or improve the cultural awareness and/or competence of attendees.
- List plans for speakers, presenters, and participants. Attach letters of collaboration, support, and/or agreement to participate in the conference in Appendix 1.
- Describe plans for development and dissemination of conference product(s) (*e.g.*, publications, reports).

Section C: Management Plan, Staffing, Project Organization and Resources (25 points)

- List any previous conferences you have conducted or coordinated, include dates, topics, attendance, and products. Also indicate if you have not conducted or coordinated conferences before.
- Describe the administrative and organizational structure that will facilitate goals, objectives, and approach of the conference.
- Briefly describe capability/experience of the proposed conference

director and other key personnel. Attach their resumes in Section F Biographical Sketches and Job Descriptions.

• Describe how competence in culture, language, and gender issues is evidenced in the staffing, organization, and products of the conference.

Section D: Appropriateness of the Evaluation Plan (10 points)

• Describe your plan for evaluation of conference planning, content, and outcome.

• Describe how the proposed evaluation (for instance, the methods and instruments used) is appropriate to the culture and values of the attendees, as well as how it ensures that the interpretation of findings will be accurate.

• If you are applying for a conference grant from CSAP, state your agreement to comply with the GPRA reporting requirements to be provided in the terms and conditions of the grant awards from CSAP. If you are applying for a conference grant from CMHS, state your agreement to comply with the GPRA reporting requirements provided in Appendix B. If applying for a conference grant from CSAT, discuss how you will comply with the GPRA requirements (including a 30-day follow up with a minimum of 80% of all baseline participants followed up) specified in Appendix A of this document).

In addition applicants should describe any prior experience in conducting follow-up surveys, use and effect (if any) of incentives in the prior activities, and the specific methods (including incentives) to achieve an 80% response rate for the follow-up surveys.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Each of the SAMHSA Centers maintains responsibility for and makes funding decisions regarding conferences in its respective areas of expertise: services for treatment and prevention of mental illness are made by CMHS, substance abuse prevention are made by CSAP, and substance abuse treatment are made by CSAT. The Centers may combine funds to support conferences that simultaneously address mental health and substance abuse prevention and treatment issues.

Decisions to fund a grant are based on:

• Availability of funds.

• Strengths and weaknesses of the application as determined by a peer review committee.

• Balance among target population/issue and program size.

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points [Potential Significance of the Proposed Project–35 points]. Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

An applicant is eligible to receive funding from a particular Center (CMHS, CSAP, or CSAT) for only one conference annually.

Additional award criteria may be applied in future years to ensure responsive distribution of conference topics, cultural competence, and/or geographical locations. Funding considerations, when applicable, will be announced annually at SAMHSA's Web site: *http://www.samhsa.gov/grants/*.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site (*http://www.samhsa.gov/grants/2004/useful_info.asp*).

• You will be held accountable for the information provided in the application. Failure to meet stated goals and objectives may result in suspension or termination of the grant award.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services ''Survey on Ensuring Equal Opportunity for Applicants.'' This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide a final report. The final report must describe the conference, attendance, presentation, speakers, expenditures, and the conference evaluation must be submitted.

• Grantees must provide a final financial status reports. This report may be included as separate section of the final progress report or can be a separate document.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's Conference Grants program are described in Section I–B under ''Data and Performance Measurement'' and listed in Appendices A, B, and C of this document.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

- Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.
- Include acknowledgment of the SAMHSA grant program as the source of funding for the project.
- Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions on mental health topics, contact: David Morrissette, DSW, Center for Mental Health Services/SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653. E-mail: *dmorriss@samhsa.gov.*

For questions on substance abuse treatment topics, contact: Kim Plavsic, Center for Substance Abuse Treatment/SAMHSA, 5515 Security Lane, Suite 740, Rockville, MD 20852, (301) 443–7916, E-mail: *kplavsic@samhsa.gov.*

For questions on substance abuse prevention topics, contact: Rosa I. Merello, Ph.D., Public Health Advisor, Center for Substance Abuse Prevention/SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, Phone: (301) 443–7462, Email: *rmerello@samhsa.gov.*

For questions on grants management issues, contact: Kathleen Sample, Office of Program Services, Grants Management Branch/SAMHSA, 5600 Fishers Lane/Rockwall II, Room 630, Rockville, MD 20857, (301) 443–9667, E-mail: *ksample@samhsa.gov.*

Appendix A: CSAT's GPRA Requirements and Meeting Survey (Baseline and Follow-Up) Forms

The GPRA measures for CSAT Conference grantees are as follows:

- Number of events.
- Number of participants.
- Satisfaction with the events.
- Utilization of material and information to make a change in their practice as a result of the event. Grantees are expected to collect baseline (end of the event) GPRA data on all participants at Knowledge Application (KA) events (meetings). In addition, the grantee is expected to conduct a 30-day follow up to the events with a minimum 80% of all baseline participants followed up. Applicants should consider this requirement when preparing the evaluation budget section of the application.

Your experience may indicate that the use of modest incentives will be necessary to achieve the required 80% response rate for each client follow up interview.

CSAT's GPRA Meeting Survey forms are included as part of this appendix. These forms, as well as CSAT's GPRA Strategy are also available on the Web at the following address: *http://www.csat-gpra.samhsa.gov.* Click on General Information for the GPRA Strategy. For the Surveys, click on Data Collection Tools/Instructions, click on Knowledge Application Program, then click on Data Collection Tools.

CSAT will provide usernames and passwords to grantees as well as data collection and follow-up training. All grantees must collect GPRA data and enter the data via the Web site.

BILLING CODE 4162–20–P

CSAT BASELINE MEETING SATISFACTION SURVEY

Form Approved
OMB NO. 0930-0197
Exp. Date 12/31/2004

CENTER FOR SUBSTANCE ABUSE TREATMENT

Public reporting burden for this collection of information is estimated to average 10 minutes per response to complete the Contact Information Form and this questionnaire. Send comments regarding this burden estimate or any other aspect of this collection of information to the SAMHSA Reports Clearance Officer, Room 16-105, 5600 Fishers Lane, Rockville, MD 20857. 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 control number for this project is 0930-0197.

Customer Survey—CSAT Meeting

Please enter the Personal ID Code you used on the consent form here _____.

Date of meeting, location (i.e., city, state), and topic will be pre-coded and entered in this area of the form.

Please check here ( ) if you have received this survey in error, (i.e., you did not attend the meeting listed above) and return the uncompleted survey in the enclosed postage-paid envelope.

PLEASE BASE YOUR ANSWER ON HOW YOU FEEL ABOUT THE SESSION NOW.

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
1. How satisfied are you with the overall quality of this meeting?	1	2	3	4	5
2. How satisfied are you with the quality of the information/instruction from this meeting?	1	2	3	4	5
3. How satisfied are you with the quality of the meeting materials?	1	2	3	4	5
4. Overall, how satisfied are you with the meeting experience?	1	2	3	4	5

PLEASE INDICATE YOUR AGREEMENT WITH THESE STATEMENTS ABOUT THE MEETING.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
5. The meeting class was well organized.	1	2	3	4	5
6. The material presented in this meeting class will be useful to me in dealing with substance abuse.	1	2	3	4	5
7. I expect to use the information gained from this meeting.	1	2	3	4	5
8. I expect this meeting to benefit my clients.	1	2	3	4	5
9. This meeting was relevant to substance abuse treatment.	1	2	3	4	5

10. I would recommend this meeting to a colleague.	1	2	3	4	5

	Very Useful	Useful	Neutral	Useless	Not Applicable
11. How useful was the information you received?	1	2	3	4	5

12. Please indicate which title best describes your job:

___Medical Director
___Physician
___Nurse
___Physician's Assistant
___Pharmacist
___Manager/Director
___Clinical Administrator/Manager
___Clinical Supervisor
___Psychologist
___Counselor
___Social Worker
___Federal Government Official
___State Government Official
___County Government Official
___Researcher
___Other (please specify)_____

13. Please indicate which best describes your agency or affiliation:

___Federal Government
___State Government
___County Government
___Local Government
___Substance Abuse Treatment Program
___University or other higher education institution
___Other (please describe)_____

14. What is your gender? 1.____Male 2.____Female

15. Are you Hispanic or Latino? 1.____Yes 2.____No

16. What is your race (Mark all that apply)?

____Black or African American
____Asian
____White
____Alaska Native
____American Indian
____Native Hawaiian or Other Pacific Islander

What about the meeting was most useful in supporting your work responsibilities?
How can we improve our meetings?

Thank you for completing our survey.

Return your survey to the Survey Administrator for your Session.

CSAT FOLLOW-UP MEETING SATISFACTION SURVEY

Form Approved
OMB NO. 0930-0197
Exp. Date 12/31/2004

Public reporting burden for this collection of information is estimated to average 10 minutes per response to complete this questionnaire. Send comments regarding this burden estimate or any other aspect of this collection of information to the SAMHSA Reports Clearance Officer, Room 16-105, 5600 Fishers Lane, Rockville, MD 20857. 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 control number for this project is 0930-0197.

CENTER FOR SUBSTANCE ABUSE TREATMENT

Customer Survey - Meeting Follow-up

Personal ID code, date of meeting, location (i.e., city, state), and topic will be pre-coded and entered in this area of the form.

Please check here ( ) if you have received this survey in error, (i.e., you did not attend the meeting listed above) and return the uncompleted survey in the enclosed postage-paid envelope.

PLEASE BASE YOUR ANSWER ON HOW YOU FEEL ABOUT THE SESSION NOW.

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
1. How satisfied are you with the overall quality of the meeting?	1	2	3	4	5
2. How satisfied are you with the quality of the information/instruction?	1	2	3	4	5
3. How satisfied are you with the quality of the meeting materials?	1	2	3	4	5
4. How satisfied are you that the meeting was relevant to substance abuse treatment?	1	2	3	4	5
5. Overall, how satisfied are you with your meeting experience?	1	2	3	4	5

PLEASE INDICATE YOUR AGREEMENT WITH THESE STATEMENTS ABOUT THE MEETING.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
6. The material presented in the meeting has been useful to me in consensus building.	1	2	3	4	5
7. The meeting enhanced my skills in this topic area.	1	2	3	4	5
8. The meeting was relevant to my career.	1	2	3	4	5
9. The meeting has enabled me to serve my clients better.	1	2	3	4	5
10. The meeting was relevant to substance abuse treatment.	1	2	3	4	5
11. I would recommend the meeting to a colleague.	1	2	3	4	5
12. I would take additional meeting from CSAT.	1	2	3	4	5

CENTER FOR SUBSTANCE ABUSE TREATMENT

Customer Survey – Meeting Follow-up

	Very Useful	Useful	Neutral	Useless	Not Applicable
13. How useful was the information you received during the meeting?	1	2	3	4	5

	Yes	No
14. Did you share any of the information from the meeting with others?	1	2
15. Did you share any of the materials from the meeting with others?	1	2
16. Have you applied any of what you learned in the meeting to your work?	1	2

What about the meeting was most useful in supporting your work responsibilities?
How can we improve our meetings?

Thank you for completing our survey.

Please return your survey in the enclosed reply envelope.

Appendix B:
CMHS Customer Satisfaction Survey

Form Approved
OMB NO. 0930-0197
Exp. Date 12/31/2004
See burden statement on the reverse side

CENTER FOR MENTAL HEALTH SERVICES SUPPORTED CONFERENCES

Customer Satisfaction Survey

The Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA) is interested in obtaining information regarding your level of satisfaction with the conference you have attended. The survey results will be compiled and used to assess whether the conference appropriately met your needs. The survey will also be used to gauge future improvements in the CMHS Conference Grant Program. Thank you for your help.

	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
1. How satisfied are you with the overall quality of this conference?	1	2	3	4	5
2. How satisfied are you with the quality of the information/instruction from this conference?	1	2	3	4	5
3. How satisfied are you with the quality of the conference materials?	1	2	3	4	5
4. Overall, how satisfied are you with your conference experience?	1	2	3	4	5

PLEASE INDICATE YOUR AGREEMENT WITH THESE STATEMENTS	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
5. The conference was well organized.	1	2	3	4	5
6. The material presented in this conference will be useful to me in dealing with mental health issues.	1	2	3	4	5
7. I expect to use the information gained from this conference.	1	2	3	4	5
8. I expect this conference to ultimately benefit people with emotional and/or behavioral disorders.	1	2	3	4	5
9. This conference was relevant to mental health treatment.	1	2	3	4	5
10. I would recommend this conference to others.	1	2	3	4	5

	Very Useful	Useful	Neutral	Useless	Not Applicable
11. How useful was the information you received?	1	2	3	4	5

12. Please indicate which title best describes your role in relation to this conference.

__Medical Director
__Physician
__Nurse
__Physician's Assistant
__Pharmacist
__Manager Director
__Clinical Administrator/Manager
__Clinical Supervisor
__Psychologist
__Counselor
__Social Worker
__Federal Government Official
__State Government Official
__County Government Official
__Researcher
__Other (please specify)_____

13. Please indicate which best describes your agency or affiliation:

__Federal Government
__State Government
__County Government
__Support or Advocacy Group
__Mental Health/Substance Abuse Treatment Program
__University or other Higher education institution
__Local Government
__Other (please describe)_____

14. What is your gender? 1._____Male 2._____Female

15. Are you Hispanic or Latino? 1._____Yes 2._____No

16. What is your race (Mark all that apply)?

__Black or African American
__Asian
__White
__Alaska Native
__American Indian
__Native Hawaiian or Other Pacific Islander

What about the conference was most useful in supporting you?

How can we improve our conferences?

Thank you for completing our survey.

Return your survey to the Survey Administrator for your Session.

Public reporting burden for this collection of information is estimated to average 10 minutes per response to complete the Contact Information Form and this questionnaire. Send comments regarding this burden estimate or any other aspect of this collection of information to the SAMHSA Reports Clearance Officer, Room 16-105, 5600 Fishers Lane, Rockville, MD 20857. 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 control number for this project is 0930-0197.

BILLING CODE 4162–20–C

Appendix C: Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

—Use the PHS 5161–1 application.

—Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The page limit for Appendices cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

—The 10 application components required for SAMHSA applications should be included. These are:

• Face Page (Standard Form 424, which is in PHS 5161–1).

• Abstract.

• Table of Contents.

• Budget Form (Standard Form 424A, which is in PHS 5161–1).

• Project Narrative and Supporting Documentation.

• Appendices.

• Assurances (Standard Form 424B, which is in PHS 5161–1).

• Certifications (a form within PHS 5161–1).

• Disclosure of Lobbying Activities (Standard From LLL, which is in PHS 5161–1).

• Checklist (a form in PHS 5161–1).

—Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.

• Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.

• Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

Appendix D: Glossary

Conference: A conference is a regional workshop or any other organized and formal meeting lasting 1 or more days where persons assemble to exchange information about the science and practice of substance abuse and/or mental health identification, treatment, and prevention. Conferences must be open to a broad constituency of interests and skills that include providers, practitioners, researchers, advocates, consumers, family members, and the general public.

Conferences that focus on a single audience, such as training sessions for volunteers or practitioners, or seminars for researchers, do not fit this definition.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Dated: March 25, 2004.

Margaret M. Gilliam,

Acting Director, Office of Policy Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7269 Filed 3–31–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Ameri-Can Customshouse Brokers Inc	88–20	Buffalo.
T.H. Weiss	D–05–92	Dallas.
Elizabeth Nimmo-Price	29–97–032	Portland.
Miguel Rodriguez	496047	San Juan.
Robin K. Flaherty	28–01–NV1	San Francisco.
Trans Air Marine	797	New York.
UPS Customhouse Brokerage	579	New York.
Martin Strauss Air Freight	885	New York.
Robert O. Kechian	974	New York.
GPS Customhouse Brokerage	10–03–W22	New York.

Dated: March 18, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–7386 Filed 3–31–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker National Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111.51), the following Customs broker national permits are canceled without prejudice.

Name	Permit #	Issuing port
GPS Customhouse Brokerage	99–00551	Headquarters.
John Arthur Hanson dba Manhattan Beach Customs Brokerage	99–00532	Headquarters.

Dated: March 18, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–7384 Filed 3–31–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled without prejudice.

Name	License #	Issuing port
GPS Customshouse Brokerage	7181	Norfolk.
Robert O. Kechian	6918	New York.
Martin Strauss Air Freight	3893	New York.
Trans Air Marine	11218	New York.

Dated: March 18, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–7385 Filed 3–31–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Revocation of Customs Broker Licenses

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Customs broker license revocations for failure to file the triennial status report and applicable fee.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and Title 19 of the Code of Federal Regulations at section 111.30, the following Customs broker licenses are revoked by operation of law without prejudice. Note that some of these entities may continue to provide broker services under another valid brokerage license.

Dated: March 18, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

License port	Licensee name	License No.
Anchorage, AK—3126	Gronewald, LaVerne	9907
Atlanta, GA—1704	Duty R.A.D. Solutions, Inc	16057
	Finnegan-Price, Sharon	14590
	Lee, Lisa	15642
	Pizzini, Kari	16858
	Sego, Lisa	13411
	McNeil, Eric	14857
	Munie, Kim	17036
	Watkins, Leslie Milligan	14306
Baltimore, MD—1303	Andranian, Joseph	14849
	Bellack, Paul	5425
	Bollhorst, Donald	4256
	Braverman, Julius	4157
	Caplan, Ronald	4105
	Connor, Paul	2856
	Davis, Michael	4530
	Einsidler, Neal	13784
	Fillmore, Joan	9747
	Flynn, Myles	10957
	Hendrix, Marshall	6694
	Horwitz, Morris	3434
	Keeney, Stephen	4904
	Kraus, Duncan	3587
	Kuhl, Donald	4111
	Mahon, Patrick	7210
	McDonagh, Meredith	13730
	Neff, Monica	12527
	Nowakowski, Joan	9699
	Price, Mary	10297
	Schevitz, Howard	4159
	Stern, George	3123
	Wilmot, James	6079
	Young, Robert	7709
Boston, MA—0401	Advance Brokers, LTD	5551
	Brown, Jeffrey E	9703
	Butler, Patrick M	11547
	Cho, Chungo	17503
	Digiulio, Lisa	16421
	Gangai, Sara Yuki	12804
	Horrox, James Carl	15280
	Kearney, Marla H. Bernstein	14836
	Livoli, Barbara Ann	12102
	Maguire, Karen Elizabeth	12650
	Marshall, Carol Ann	6404
	Marshall, William	3676
	Martin, Marie Louise	14210
	Mui, Christina C	14503
	Shaw, Ransom Bonnet	13253
	Stevenson, Barbara J	9704
	Takles, Constantinos P	16943
	Vitorino, Nancy	16113

License port	Licensee name	License No.
Buffalo, NY—0901	Barber, Jonathan	17233
	Fazily, Fawzia	15297
	Gandy, Michael	12162
	Herlehy, Kendra	12153
	Morganti, John	20292
	Nichols, Gregory	20293
	Thill, Joseph	15528
	Wall, Helen	12586
	Wilkinson, Christopher	20237
	Zimmerman, Terry	5056
Champlain-Rouses Point—0712	Fenner, Tanya L	16463
	Gehrig, Paul M	14287
	Gibbons, John E	13821
	Kelley, Judy	20722
	Parisian, George	10423
	Reed, Jr, Harry H	15422
	Snow, Richard N	12672
	Turcotte, Gaston E	5271
	Valach, Victor	3166
	Wood, Gregory H	4824
	Wright, Rodney L	4172
Charleston, SC—1601	Beier, William J	15892
	Richards, Robert Alfred	03310
	Hostetter, Harlan H	04147
	Diaz, Jr, Antonio Manuel	06175
	Fenwick, Judith Proctor	09959
	Winters, Deborah J	10215
	Laskey, Kathleen H	10242
	Huff, Nicole M	10684
	Deal, Susan A	10742
	Gaillard, Sarah S	11521
	Allensworth, Andrea (Lyles)	11833
	Nelson, Angela Ackerman	12342
	Wunderler, Dayle A	12343
	Lesemann, III, Arvid R	14008
	Cournoyer, Shannon M	15158
	Foster, Tyler Kenneth	16554
	Blanks, Caroline Ruth	20797
Charlotte, NC—1512	Drawback Central Inc	12596
	Morton, Christopher Dean	20585
	Wagoner, Elizabeth A	20208
Chicago, IL—3901	Griffiths, William	4800
	Jones, Allen E	5384
	Keith, Nelda	10802
	Mueller, Gene L	4903
	Van Stee, Mark	15009
	Amber Marine International LTD	13312
	Andro-Sierra International	21686
	Eagle International LTD	6629
	Briskey, Bradford	13521
	Chen, Grace	21672
	Culloton, Julie	17016
	Donnell, Joseph	5264
	Farnsworth, Marjorie	14300
	Heimendinger, Gary	5311
	Kortes, Robert	6894
	Lambert, Cathryne	20662
	Szymanski, Richard	10923
	Wolski, Conrad	12556
	Wright, Pamela	13027
	Zlatanovski, Zaklina	16864

License port	Licensee name	License No.
Cleveland, OH—4101	Ball, Nancy	16459
	Dixon, David	15179
	Kindle, David E	15183
	Longley, Keith	11888
	Murray, Robert J	14219
	Newman, Robert	7554
	Noss, Jr, Donald	15229
	Phillips, Franklin J	2598
	Porter, Susan	12236
	Quinn, Heidi M (Longley)	10576
	Ritter, Jennifer	15277
	Robinson, Faith D	14420
	Seybold, Suzane M	12712
	Smith, Yang Xu	14938
	Stamm, Michael	16377
	Stewart, Jeffery	12227
	Vendetti, Marilou	12508
	Vinson, James P	16383
	White, Troy	14770
	Wolff, Thomas	14422
	McGill, Larry	9988
	Meuter, Walter	2158
	Shaver, Joseph	21571
	Shaw, Robert M	10207
	Bain, Albert E	9301
	Ball, Lonnie	14717
	Kirsch, Elizabeth	20223
	Starr, David B	10208
Dallas/Ft. Worth, TX—5501	Crowder, John	15135
	Pike, James	17116
	Robinson, John	16418
	Rogers, Joel	20727
Detroit, MI—3801	Blanchard, Rachelle	11025
	Filbin, William	2672
	Gerber, William	4119
	Irvin, Michael	17135
	Leakeas, Stefannie	16311
	Lowrie, Richard	4773
	Michel, Daniel	13861
	Moga, Jeffrey	11031
	Molina-Harris, Jeanette	16784
	Moore, Gerald	15203
	Morton, Anthony	14952
	Nahrgang, David	3576
	Paschke, Randolph	13299
	Pongracz, Wanda	11032
	Rhoads, Susan	14263
	Ritter, Michael	14882
	Salo, Ann	5518
	Schmidt, Jack	7483
	Straith, Lisa	16585
El Paso, TX (Service)—2402	Arevalo, Jose	12776
	Flynn, Jack	13206
	Fonseca, Elvia R	16094
	G.L. Gumbert Company, Inc	5424
	Gonzalez, Kathleen Rose	13731
	Interamericas Customs Brokerage, Inc	13868
	Kotkowski, Doron	13584
	Lizarraga, Marcos A	12362
	Lockwood, Betty C	4806
	Martinez, Edgar	7104
	Martinez, Jr, Robert	13533
	Pena, Jr, Alberto	15953
	Rupe, Roger P	12775
Great Falls, MT (Service)—3304	Lee, Mark	21507
	Mueller, Dennis R	13534
	Parker, Jodi	16981
	Scoggins, Lewie T	12739
	Trapani, Michael C	13745
	Worth, Sherry Kay	10893

License port	Licensee name	License No.
Houston, TX—5301	Fox, Whitney	16796
	Francis, James	16636
	Fuentes, Pete	5866
	Hart, Elizabeth	14349
	Hood, Christine	14687
	Kuperman, Alex	20809
	Lee, Russell	16888
	McClung, Melinda	16792
	Moore, Marlene	12090
	Moore, Robert	14148
	Schurig, Christina	12821
	Sitton, Scott	15738
Laredo, TX—2304	Benitez, Delia	16473
	Cienfuegos, Inc	15211
	H.C. Int'l U.S. Customhouse Broker, Inc	13137
	Hakes, Lynn	7556
	Interamerica Brokerage	13991
	Maingot, Catherine	16173
	MTZ International, Inc	16524
	Ramos, Sylvia	12384
	Rangel, Mario Negrete	5703
	Soma Custombroker Corp	17230
	Sylvia A. Ramos, Inc	15655
Los Angeles, CA—2704	Barth, Keith Robert	14431
	Bloom, Michael Arthur	17353
	Budnick, Theodora Helene	11095
	Cadenhead, III, Frank C	9449
	Chung, Eunhee	12290
	Clarke, Ronald Milton	3549
	Denny, Christine Maria	16818
	Finley, Michelle Marie	14656
	Fong, Linda Chan	20278
	Grace, John Matthew	15248
	Gurstel, Dana Allison	14072
	Hardin, Mary Kathleen	16889
	Harrison, Gregory Glenn	9735
	Hartman, Robert	9434
	Hashish, Fahri Ilias	12709
	Hinojosa, Julio	15501
	Jordan, Alexis Kimberly	16543
	La Riva, Michael	20038
	Lam, Benny	14684
	Leafa, Lorraine	13184
	Meyer, Mir	14524
	Panlilio, Josette	16933
	Retamal, Sergio Umpierrez	14961
	Roldan, Kristine	21245
	Russell, Jay	4550
	Sciola, Darlene	9111
	Suzuki, Blake	11125
	Young, David Michael	14099
	Young, Harold	13969

License port	Licensee name	License No.
Miami, FL—5201	Aftimos, Fadi	15415
	Boyer, Michael A	14927
	Chiras, Faith M	12222
	Continental Express Intl	13166
	Customs Clearance Dispatch Inc	6204
	F I F North America Customs Brokers	11343
	Fakla, Istvan	15414
	Ferguson, Robin K	13680
	Follmer, Robert C	6917
	Garcia, James	15409
	Innes, John	10593
	Lion Customs Brokers	20030
	Martel, Victor B	14926
	Matusek, John Carl	7503
	Max International	10637
	McKenna, Michael T	13573
	National Bonded Warehouse, Inc	20250
	Pantaleon, Hugo	6833
	Pasqual, Cynthia	11656
	Pioneer General, Inc	15503
	Spencer, Sharon B	15637
	TEKA International, Inc	20501
	Unit Int'l of Miami DBA ABA Brokerage Co	13168
	Wicklman, Gregory A	15636
	Stockstad, Chery Ann	7723
	National Bonded Warehouse, Inc	20250
Milwaukee, WI—3701	Glaunert, Diana	9616
	Lemke, Allen	4615
	Voisin, Robert	17566
Minneapolis, MN—3501	All-Ways Cargo	14780
	Malek, Carol Buchanan	6239
	Flora, Scott	13927
	Supina, Susan	16848
Mobile, AL—1901	Domning, Juanita	7108
	Harris M. Steward, CB, Inc	14893
	Marquet, Wallace	4764
New Orleans, LA—2002	Cain, Gregory	16972
	Dillon, Talmage	6956
	Eddings, Bradley	17248
	Galanto, Trina	14589
	Jones, Patricia	12338
	Krumm, Sheryl	20344
	Lawrence M. Parry Jr Inc	7309
	Luskcom Group, Inc	9569
	Miller, Frederick T	2486
	Oaks, Terry L	7657
	Philbin Cazalas & St. John	3759
	Schaerer, Melissa D	11807
	Thornton, Kathleen	6779
	Vegas, Irvin E	4696

License port	Licensee name	License No.
New York, NY—1001	Abbe, Herbert John	4428
	Abe M. Knipper, Inc	4981
	Aldamuy Jr, Humbert	7704
	Catalanotto, Orquidea	9573
	Chang, Matthew	8000
	Cohen, Nathaniel	759
	Conway, Francis	6596
	Cullen, Lawrence	3961
	De Jesus, Rowena	15161
	Dutta, Kabita	11222
	Emanuele, John	9114
	Fong, Stanley	9199
	Freschl, Joel	9951
	G.S.A. Inc	20469
	H. Abbe International, Inc	10428
	Heeger, Gunther	6228
	Heemsoth-Kerner Corp	1544
	Hillerud, Dennis	10257
	Homa, Michael	6908
	Import-Export Service of NJ, Inc	3068
	Isacoff, Norman	4970
	Kaminsky, Jane	13880
	Klein, Jack	3658
	Lanigan, Robert	6863
	Lawler, James	3842
	Lesser, Stanford	3468
	Leung, Sammy Shui	15206
	Lind, Patricia	15050
	Losche, Richard	9306
	Lynch, Tracey Ann	16070
	Mattina, William	10060
	Matyas, Yehuda	17061
	Miranda, Juliette	17314
	Negron, Jose	3178
	Ng, Sze Yan	20612
	O'Neil, Robert	3458
	Petersen, Douglas	12279
	Pratt, Ian	17487
	Pujol, Jerome	3527
	Rashkover, Deborah	10373
	S. Stern Custom Brokers, Inc	4203
	Sabella, Joseph	13214
	Sandvik, Gary	6867
	Sapot, Ignacio	4320
	Schneider, Richard	13039
	Schwartz, Sam	6216
	Scifo, Gaetano	3558
	Shope, Ilene	3989
	Six, Edward	6565
	Smith, Barry	5597
	Stotchik, Morris	3887
	TAC Customs Brokers, Inc	9175
	Tobia, Lawrence	12614
	Tong, Hsin-Chung	12430
	Tucciarone, Laura	12525
	Vajda, William	11860
	Van Ornum, Jeanne	9721
	Weidner, John	2623
	Wein, Nathan	2987
	Wyatt, Chad	13330
Nogales, AZ (Service)—2604	Burns, Steven	10187
	Gill, Richard	4424
	Ibarra Jr, Luis	20291
	Piccioli, Thomas	12545
	Polkinhorn, Bill	2261
	Ramirez, Marco	9649
	Smallwood, Loretta	11789
	Smith, Deanne	13343
	Terrazas, Marco	12591
	Trans-Mex Customhouse Brokerage Inc	16791
	Weimer, Alex	13386

License port	Licensee name	License No.
Norfolk, VA—1401	Magenbauer, John	13502
	Vanderberry, Edward	3799
Otay Mesa—2506	Ortiz, Sheri	20923
	Price, Todd	16470
	Romero, Rene	2576
Philadelphia, PA—1101	Amoriello, Joseph L	11446
	Baird, Kenneth J	7550
	Chrisman, Jr, William W	6549
	Gaudio, Alan	10039
	Gehry, Bruce R	7429
	Pennell, Jr, William G	6445
	Sun, Charlene Chen	14867
	Wallace, Barbara Ann	5190
	Walsmann, Monika	16213
	Yost, John Andrew	13352
Portland, ME—0101	Chase Leavitt CHB	6730
	Fenderson, Robert T	4496
Portland, OR—2904	Taplin, Suzanne L	4701
Providence, RI—0502	Nelson, John	7716

License port	Licensee name	License No.
San Francisco, CA—2809	Roque, Caesar	4485
	Silvestri, Robert	6435
	Rasche, Stephen	10310
	Adams, L	3707
	Ambris, Pamela	12195
	Beijen, Bonnie	3591
	Belenky, Daniel	7948
	Benge, Mark	7490
	Billingsley, Natalie	11055
	Bon, Maria-Edna	6311
	Bonfiglio, James	6835
	Bonham, Verlene	12668
	Bresee, Debbie	9920
	Carpenter, David	16355
	Carrier, James	4225
	Caughell, Ralph	5169
	Christ, Harry	11546
	Clausen, Catherine	6804
	Coady, Richard	5820
	Davis, Sandra	6695
	Edwards, Hudson	5945
	Elam, Alan	12196
	Ellis, Paul	16357
	Galfi, Eva	20681
	Garrett, Ellen	6564
	Groh, Thomas	12106
	Harrison, Alastair	10319
	Helm, Patricia	8074
	Howland, Franklin	1497
	IMD Logistics Solutions, Inc	17345
	Koons, David	16364
	Kubo, Christine	13068
	Landa, Jeffrey	7023
	Lee, John	6828
	Lie, Jae	11862
	Louks, Charlotte	4748
	Lum, Homer	4266
	Martin, Carolyn	13130
	Muller, Augusto	9953
	Oldmen, Monica	11715
	Perkins, John	7790
	Plimpton, Harlow	4383
	Roberts, William	4085
	Robinson, Carl	3463
	Salach, James	12850
	Sanchez, Javier	13831
	Skelton, Leslie	3427
	Smallcombe, Rosemarie	12424
	Stanton, Thomas	5846
	Sunderfelt, John	4332
	Swift, Edward	4745
	Toman, Edward	17373
	Wanerman, Brian	11003
	Wells, Marlene	13563
	Whittier, Louis	2217
	Wiederhold, Thomas	4758
	Williams, Charles	13022
	Young, Sarah	13344
San Juan, PR—4909	Cortes, Luis	21319
Savannah, GA—1703	Black, James	5802
	Bruner, Kellie	15474
	Coleman, James	14601
	D.J. Powers International	16974
	Denny, Christopher	13432
	Dewberry, Susan	13107
	Koneman, Michelle	14998
	Kunimoto, Rebecca	14163
	McNeil, Eric	14857
	Tradesource, Inc	13007
	Watkins, Lesley	14306

License port	Licensee name	License No.
Seattle, WA—3001	Bell, Marcena	14264
	Brown, Todd	13112
	Burnham, Dana	15112
	Egenes, Clay	15577
	Freeman, Dennis	5484
	Henderson, Willie	11980
	Keller, Mary	11986
	Lane, David	14959
	Marx, Margaret	16821
	McNally, Tessa	16510
	McClary, Daniel	4308
	Palmer, Holly	15004
	Swenson, Carl	2621
	Welk, Dorothea	12549
	Yager, Richard	5513
St. Louis, MO—4503	Colombo, Mario	6714
	Green, III, James A	4250
	Gurski, Julie	12515
	Stephens, Isom Irwin	8053
	Trego, Connie J	5647
	Volkman, Patricia K	11548
Tampa, FL—1801	Bergermann, Vera	13715
	Dees, Frances	5088
	McGiffin, Jr, JNO	1373
Washington, DC—5401	Carlson, Amy	15791
	Layton, James	17588

[FR Doc. 04–7383 Filed 3–31–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License	Port name
Miguel Rodriguez	6047	New York.
Francis M. Murphy	04116	Detroit.
Vincent Montello	5751	New York.
Enrico L. Moscola	6918	New York.

Dated: March 18, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–7387 Filed 3–31–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–24]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Mortgagee's Application for Insurance Benefits

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.

HUD is requesting extension of approval to collect information in the form of applications for insurance benefits. A lender with an insured multifamily mortgage may pay an annual insurance premium to HUD. When the mortgage goes into default, the lender may elect to file with HUD a claim for insurance benefits. A requirement of the claims filing process is the submission of an application for insurance benefits.

DATES: *Comments Due Date:* May 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0419) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Mortgagee's Application for Insurance Benefits

OMB Approval Number: 2502–0419.

Form Numbers: 2747.

Description of the Need for the Information and Its Proposed Use: A lender with an insured multifamily mortgage may pay an annual insurance premium to HUD. When the mortgage goes into default, the lender may elect to file with HUD a claim for insurance benefits. A requirement of the claims filing process is the submission of an application for insurance benefits.

Respondents: Business or other for-profit, and State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=
Reporting Burden	110	110		0.08	9

Total Estimated Burden Hours: 9.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 26, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–7381 Filed 3–31–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–25]

Notice of Submission of Proposed Information Collection to OMB: Grant Application for Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to collect information necessary to select applicants for Section 202 Grants for Supportive Housing for the Elderly.

DATES: *Comments Due Date:* May 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0267) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; fax number (202) 395–6974; e-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Grant Application for Section 202 Supportive Housing for the Elderly.

OMB Approval Number: 2502–0267.

Form Numbers: HUD–92015–CA, HUD–92041, HUD–92042, plus standard grant forms: SF–424, SF–424–Supplemental, HUD–424–B, SF LLL, HUD–2880, HUD–2991, HUD–2990, HUD–96010.

Description of the Need for the Information and Its Proposed Use: This is a request for approval to collect information necessary to select applicants for Section 202 Grants for Supportive Housing for the Elderly.

Respondents: Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	400	400		37.5		15,048

Total Estimated Burden Hours: 15,048.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 29, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–7382 Filed 3–31–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical Agency Draft Recovery Plan for the Threatened Guajón (Eleutherodactylus cooki) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for the guajón (also referred to as the Puerto Rican demon). The guajón is one of sixteen species of frogs from the genus *Eleutherodactylus*, commonly known as ''coquíes'' that inhabit the island of Puerto Rico, and is also the second largest species found on the island. The guajón is extremely limited in its geographic distribution. The species inhabits localities in the ''Sierra de Panduras'' mountain range, and the municipalities of Yabucoa, San Lorenzo, Humacao, Las Piedras, and west to Patillas-San Lorenzo. The guajón, named after the habitat it occupies, occurs at low and intermediate elevations, from 18 to 1,183 feet (5.5 to 360.6 meters) above sea level, where it inhabits caves formed by large boulders of granite rock known as ''guajonales'' or streams with patches of rock without cave systems. The technical agency draft recovery plan includes specific recovery objectives and criteria to be met in order to delist the guajón under the Endangered Species Act of 1973, as amended (Act). We solicit review and comment on this technical agency draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the technical agency draft recovery plan on or before June 1, 2004.

ADDRESSES: If you wish to review this technical agency draft recovery plan, you may obtain a copy by contacting the Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (telephone (787) 851–7297), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans.* If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Boquerón Field Office, at the above address, or fax your comments to (787) 851–7440.

3. You may send comments by e-mail to *Jorge_Saliva@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received are available for public inspection on request, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jorge Saliva at the above address (telephone (787) 851–7297, ext. 24).

SUPPLEMENTARY INFORMATION:

Background

We listed the guajón as threatened on June 11, 1997 under the Act (62 FR 31757). The guajón may be the only species of *Eleutherodactylus* in Puerto Rico that exhibits differences between sexes in color. Females have solid brown coloration, with a uniformly white undersurface. They have white-rimmed eyes, and large, truncate disks on their feet. Males have yellow coloration extending from the vocal sac to the abdomen and flanks. Females are larger than males, with a mean size (snout-vent length) of 2.01 inches (5.11 cm) for females and 1.71 inches (4.34 cm) for males. The voice of the guajón is low and melodious.

For this species, deforestation and earth movement for agricultural, urban and rural development, and highway construction are likely the principal causes for decline. In addition, the guajón is threatened by the use of pesticides, herbicides, and fertilizers in adjacent areas, illegal garbage dumping, and the effects of catastrophic natural events such as droughts and hurricanes. Additional research is planned to look at these and other potential causes for decline.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

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 us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft plan is to provide a framework for the recovery of the guajón so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and they will be considered for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to final approval of the draft recovery plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Boquerón Field Office (see **ADDRESSES** section).

Our practice is to make all 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 addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: February 19, 2004.

J. Mitch King,

Deputy Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 04–7349 Filed 3–31–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Karst Survey Guidance and Scientific Permit Requirements for Conducting Presence/Absence Surveys for Endangered Karst Invertebrates in Central Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is making available for public comment its draft survey guidance for karst species and section 10(a)(1)(A) scientific permit requirements for conducting presence/absence surveys for endangered karst invertebrates in central Texas.

This document outlines methods to be used, information to be included in final reports, and minimum qualifications for personnel conducting presence/absence surveys for federally-listed endangered, terrestrial, karst invertebrate species (herein referred to as ''karst invertebrates'') in Travis, Williamson, and Bexar counties, Texas, under a section 10(a)(1)(A) permit pursuant to the Endangered Species Act (Act) of 1973, as amended. This document also outlines the Service's recommendations for detecting karst features that may contain suitable habitat for endangered karst invertebrates, as a first step in determining presence/absence. The objective of this document is to identify survey methods that will produce sound scientific information upon which to base decisions and actions for the conservation of these endangered species. Using consistent survey methodology will also allow for greater comparison and analysis of results, and thereby increase our understanding of these species and their habitat requirements.

DATES: To ensure consideration, written comments must be received on or before June 1, 2004.

ADDRESSES: Written comments and information should be submitted to Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; facsimile (512) 490–0974.

FOR FURTHER INFORMATION CONTACT: Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION:

Background

Sixteen endangered karst invertebrates are known to occur in Travis, Williamson, and Bexar counties, Texas. These karst invertebrates are only capable of surviving in caves or karstic rock. Karst ecosystems receive nutrients from the surface community in the form of leaf litter and other organic debris that are washed in or fall into the cave, from tree and other vascular plant roots, and/or through the feces, eggs, or dead bodies of animals. In addition to providing nutrients to the karst ecosystem, the plant community also filters contaminants and buffers against changes in temperature and humidity. The major threats to karst invertebrates include the loss of habitat due to urbanization, contamination, predation by and competition with non-native fire ants, and vandalism.

On February 27, 2003 we provided a notice (68 FR 9094–9095) of our intention to do the following:

(1) With respect to survey guidance for use in determining the presence of karst features that may contain potential habitat for endangered karst invertebrates in central Texas, we committed to work with the Texas Commission on Environmental Quality (TCEQ) and other partners to update, as needed, the existing TCEQ guidance on karst feature surveys.

(2) With respect to survey guidance for endangered karst invertebrates, we committed to request a panel of experts to review all new information regarding how to survey for karst invertebrates. We also committed to using the panel's recommendations to modify the section 10(a)(1)(A) permitting requirements and to develop karst invertebrate survey guidance.

This guidance was initially intended to be made available for public review and comment through a Notice of Availability to be published in the **Federal Register** by December 30, 2003. On January 16, 2004, we provided notice (69 FR 2617) of our intention to publish this draft guidance for public review by March 31, 2004.

We submitted both the draft karst feature and karst invertebrate survey guidance documents (May 23, 2002, versions) to a panel of 48 individuals with expertise in karst geology and/or biology and/or experience conducting karst feature and karst invertebrate surveys for review and comment. In addition to providing written comments, members of the panel met with us on September 8, 2003, and provided their individual feedback on both survey guidance documents and the suitability of TCEQ's guidance for surveying for karst features that may contain suitable habitat for endangered karst invertebrates.

Based on individual panel member's comments and recommendations, the Service has merged the two draft karst survey guidance documents into a single document and intends to use this document to modify the section 10(a)(1)(A) permitting requirements for conducting presence/absence surveys for endangered karst invertebrates in central Texas. This revised document, USFWS Section 10(a)(1)(A) Scientific Permit Requirements for Conducting Presence/Absence Surveys for Endangered Karst Invertebrates in Central Texas (February 18, 2004), outlines (1) Methods to be used to conduct surveys for endangered karst invertebrates, (2) information to be included in final reports, and (3) the minimum qualifications for personnel conducting presence/absence surveys for endangered karst invertebrates under a section 10(a)(1)(A) permit. Since one of the first steps in determining presence/absence of endangered karst invertebrates is to locate karst features that may have suitable habitat, this document also outlines the Service's recommendations for conducting surveys for karst features that may contain suitable habitat for endangered karst invertebrates. TCEQ's Instructions to Geologists for Geologic Assessments (GA) as revised May 1, 2002, are recommended to conduct initial karst feature surveys.

This revised document was submitted to panel members for additional review and comment and panel member's comments and recommendations were incorporated into the current version of the document, which is available for public comment.

Authority: We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing

regulations for the National Environmental Policy Act (40 CFR 1506.6).

Bryan Arroyo,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 04–7348 Filed 3–31–04; 8:45 am]

BILLING CODE 4310–55–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–208 (Review)]

Barbed Wire and Barbless Wire Strand From Argentina

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on barbed wire and barbless wire strand from Argentina.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barbed wire and barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 21, 2004. Comments on the adequacy of responses may be filed with the Commission by June 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On November 13, 1985, the Department of Commerce issued an antidumping duty order on imports of barbed wire and barbless wire strand from Argentina (50 FR 46808). Following five-year reviews by Commerce and the Commission, effective May 12, 1999, Commerce issued a continuation of the antidumping duty order on imports of barbed wire and barbless fencing wire from Argentina (64 FR 42653). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Argentina.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and in its expedited five-year review determination, the Commission defined the Domestic Like Product as barbed wire and barbless wire strand.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and in its expedited five-year review determination, the Commission defined the Domestic Industry as producers of barbed wire and barbless wire strand.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–085, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for

the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7393 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–787 (Review)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on extruded rubber thread from Indonesia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on extruded rubber thread from Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 21, 2004. Comments on the adequacy of responses may be filed with the Commission by June 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 21, 1999, the Department of Commerce issued an antidumping duty order on imports of extruded rubber thread from Indonesia (64 FR 27755). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product consisting of all extruded rubber thread, including food-grade. One Commissioner defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of extruded rubber thread. The Commission also determined that appropriate circumstances existed to exclude Globe Manufacturing Co. under the related parties provision and therefore, defined the domestic industry to consist of North American Rubber Thread Co., Ltd., the only other domestic producer at the time. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is May 21, 1999.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–086, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/

worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Suject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7394 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–326 (Review)]

Frozen Concentrated Orange Juice From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on frozen concentrated orange juice from Brazil.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 21, 2004. Comments on the adequacy of responses may be filed with the Commission by June 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 5, 1987, the Department of Commerce issued an antidumping duty order on imports of frozen concentrated orange juice from Brazil (52 FR 16426). The Commission

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–088, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

subsequently affirmed its determination in the antidumping investigation in response to a December 30, 1988, remand order of the United States Court of International Trade. Following five-year reviews by Commerce and the Commission, effective May 28, 1999, Commerce issued a continuation of the antidumping duty order on imports of frozen concentrated orange juice from Brazil (64 FR 42660). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Brazil.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination concerning the antidumping duty investigation, three members of the Commission defined the Domestic Like Product as frozen concentrated orange juice for manufacturing, a highly concentrated form of frozen concentrated orange juice. One member of the Commission found a broader Domestic Like Product consisting of frozen concentrated orange juice (encompassing frozen concentrated orange juice for manufacturing, frozen concentrated orange juice for retail, and single strength orange juice). One other like product combination was found in the original determination. In its expedited five-year review determination, the Commission defined the Domestic Like Product as the same as Commerce's scope and unchanged from the determination of the Commission majority in the original investigation, *i.e.*, frozen concentrated orange juice for manufacturing.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination concerning the antidumping duty investigation, three members of the Commission defined the Domestic Industry as growers of round oranges and extractors of orange juice that produce frozen concentrated orange juice for manufacturing; specifically excluded from the Domestic Industry were reconstitutors. One member of the Commission defined the Domestic Industry as growers and processors, including reconstituting operations of integrated producers. One other domestic industry definition was used in the original determination. In its expedited five-year review determination, the Commission defined the Domestic Industry the same as the Commission majority in the original investigation, *i.e.*, all domestic producers of frozen concentrated orange juice for manufacturing, including growers of round oranges.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The

Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in single-strength equivalent gallons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in single-strength equivalent gallons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in single-strength equivalent gallons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject

Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7391 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–496]

Certain Home Vacuum Packaging Products; Notice of a Commission Determination Not to Review an Initial Determination Terminating the Investigation as to the Rival Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') terminating the Rival respondents from the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 18, 2003, the Commission instituted this investigation based upon a complaint filed by Tilia, Inc. and Tilia International (collectively, ''Tilia''). 68 FR 49521. In its complaint, Tilia alleges that the accused imported products infringe claims 3, 4, 6, 24–25, and 34 of U.S. Patent No. 4,941,310. The notice of investigation named ZeroPack Co., Ltd., Applica, Inc., and Applica Consumer Products, Inc. (collectively, ''the Applica respondents''); and The Holmes Group, Inc. and The Rival Company (collectively ''the Rival respondents'') as respondents.

On March 4, 2004, the presiding ALJ issued the subject ID (Order No. 45) granting the joint motion of Tilia and the Rival respondents to terminate the investigation as to the Rival respondents on the basis of a settlement agreement. The Commission investigative attorney supported the joint motion. The remaining respondents, the Applica respondents, did not respond to the motion.

No party filed a petition to review the subject ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 29, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–7332 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–653 (Review)]

Sebacic Acid From China

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on sebacic acid from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on sebacic acid from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 21, 2004. Comments on the adequacy of responses may be filed with the Commission by June 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: Background.—On July 14, 1994, the Department of Commerce issued an antidumping duty order on imports of sebacic acid from China (59 FR 35909). Following five-year reviews by Commerce and the Commission, effective May 26, 1999, Commerce issued a continuation of the antidumping duty order on imports of sebacic acid from China (64 FR 47766). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–087, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Like Product* as sebacic acid.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as producers of sebacic acid.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate

in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1997.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s'') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7392 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376, 377, and 379 (Review) and 731–TA–788–793 (Review)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on certain stainless steel plate from Belgium, Italy, and South Africa and/or the revocation of the antidumping duty orders on certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–084, expiration date June 30, 2005. Public reporting

Continued

assured of consideration, the deadline for responses is May 21, 2004. Comments on the adequacy of responses may be filed with the Commission by June 14, 2004. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 11, 1999, the Department of Commerce (''Commerce'') issued countervailing duty orders on imports of certain stainless steel plate from Belgium, Italy, and South Africa (64 FR 25288). On May 21, 1999, Commerce issued antidumping duty orders on imports of certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan (64 FR 27756). On March 11, 2003, Commerce amended these antidumping and countervailing duty orders on imports of certain stainless steel plate (68 FR 11520 and 68 FR 11524). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belgium, Canada, Italy, Korea, South Africa, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations after remand, the Commission defined the Domestic Like Product as certain (hot-rolled and cold-rolled) stainless steel plate in coils. Certain Commissioners defined the Domestic Like Product differently.[2]

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations after remand, the Commission defined the Domestic Industry as producers of certain stainless steel plate in coils. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In the reviews concerning the countervailing duty orders, the Order Date is May 11, 1999, as amended on March 11, 2003. In the reviews concerning the antidumping duty orders, the Order Date is May 21, 1999, as amended on March 11, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or

burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

[2] While the Commission majority in the original determinations defined two separate domestic like products (*i.e.*, hot-rolled stainless steel plate in coils and cold-rolled stainless steel plate in coils), on remand the Commission majority's determinations involved a single domestic like product, certain stainless steel plate in coils.

comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise

in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7390 Filed 3–31–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities Under Review

ACTION: 30-day Notice of Information Collection Under Review: Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at Volume 69, Number 3, pages 684–685 on January 6, 2004, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until May 3, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology (*e.g.*, permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

The information collection is listed below:

(1) *Type of information collection.* Extension of Currently Approved Collection.

(2) *The title of the form/collection.* Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract.* Primary: State, Local or Tribal Government. Under title II of the Americans with Disabilities Act, State, and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities (''program accessibility''). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a ''transition plan'' setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,000 respondents at 8 hours per transition plan.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,000 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 29, 2004.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–7318 Filed 3–31–04; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review

ACTION: 30-day notice of information collection under review: Title III of the Americans with Disabilities Act, certification of State and local government accessibility requirements.

The Department of Justice, Civil Rights Division has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on January 6, 2004, at volume, 69, number 3, page 683, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until May 3, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

The information collection is listed below:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *The Title of the Form/Collection:* Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

(3) *The Agency Form Number and Applicable Component of the Department Sponsoring the Collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected Public who will be Asked to Respond, as well as a Brief Abstract: Primary:* State, local or tribal government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of ''places of public accommodation'' and ''commercial facilities.''

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 5 respondents per year at 64 hours per certification.

(6) *An Estimate of the Total Public Burden (in Hours) Associated with the Collection:* 320 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 29, 2004.

Robert B. Briggs,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–7319 Filed 3–31–04; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review

ACTION: 30-day notice of information collection under review: nondiscrimination on the basis of disability in State and local Government services (self-evaluation).

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at volume 69, number 3, pages 684–685 on January 6, 2004, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until May 3, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

The information collection is listed below:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *The Title of the Form/Collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) *The Agency Form Number and Applicable Component of the Department Sponsoring the Collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected Public Who Will Be Asked To Respond, as Well as a Brief Abstract: Primary:* State, local or tribal

government. Under Title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 10,000 respondents at 6 hours per self-evaluation.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 60,000 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 29, 2004.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–7320 Filed 3–31–04; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review

ACTION: 30-day notice of information collection under review: Title II of the Americans With Disabilities Act of 1990/section 504 of the Rehabilitation Act of 1973, Discrimination Complaint Form.

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** on January 6, 2004, at volume 69, number 3, pages 683–684, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until May 3, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

The information collection is listed below:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *The Tile of the Form/Collection:* Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) *The Agency Form Number and Applicable Component of the Department Sponsoring the Collection:* No form number. Disability rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected Public who will be Asked to Respond, as well as a Brief Abstract:* Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer to the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) *An Estimate of the Total Public Burden (in Hours) Associated with the Collection:* 3,750 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Briggs, Department Clearance Officer, Unites States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D. Street, NW., Washington, DC 20530.

Dated: March 29, 2004.

Robert B. Briggs,

Department of Clearance Officer, United States Department of Justice.

[FR Doc. 04–7321 Filed 3–31–04; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review; Juvenile Residential Facility Census.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, Office of Juvenile Justice and Delinquency

Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: CJ–15, The Office of Juvenile Justice and Delinquency Prevention is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit. This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total hour burden to complete the nominations is 7,000 the annual burden hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 26, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7281 Filed 3–31–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Labor Standards for Federal Service Contracts 29 CFR, Part 4. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 1, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Service Contract Act (SCA) and Regulation 29 CFR Part 4 impose certain recordkeeping and incidental reporting requirements applicable to employers with employees performing on service contracts within the Federal government. The basic payroll recordkeeping requirements contained in this regulation § 4.6(g)(1)(i) through (iv) have been previously approved under OMB–1215–0017, which constitutes the basic recordkeeping regulations for all laws administered by the Wage and Hour Division. This information collection contains three requirements not cleared under the above information collection. They are: A vacation benefit seniority list, which is used by the contractor to determine vacation fringe benefit entitlements earned and accrued by service contract employees who were employed by predecessor contractors; a conformance record report, which is used by Wage and Hour to determine the appropriateness of the conformance and compliance with the SCA and its regulations; and a collective bargaining agreement, submitted by the contracting agency to Wage and Hour to be used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4(c) of the SCA. This information collection is currently approved for use through September 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out the provisions of the Service Contract.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Labor Standards for Federal Service Contracts—Regulations 29 CFR, Part 4.

OMB Number: 1215–0150.

Affected Public: Business or other for-profit; Federal Government.

Total Respondents: 83,854.

Time per Response: 83,854.

Requirement	Number of respondents	Average time per response	Burden hours
Vacation Benefit Seniority List	82,149	1 hour	82,149
Conformance Record	200	½ hour	100
Collective Bargaining Agreement	1,505	5 minutes	125
Total	83,854	////////////	82,374

Frequency: On occasion.

Estimated Total Burden Hours: 82,374.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 26, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–7283 Filed 3–31–04; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company, et al.; 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 Arizona Public Service Company (the licensee) to partially withdraw its September 17, 2003, application for proposed amendments to Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, respectively, located in Maricopa County, Arizona.

A portion of the September 17, 2003, license amendment request proposed a change to Limiting Condition for Operation 3.1.5, Condition B, concerning control element assembly position indicators.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 9, 2003 (68 FR 68657). However, by letter dated February 20, 2004, the licensee partially withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated September 17, 2003, and the licensee's letter dated February 20, 2004, which partially withdrew the application for license amendments. 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 e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of March 2004.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–7316 Filed 3–31–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03787]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Connecticut Agricultural Experiment Station for Its Johnson Laboratory Facility, New Haven, Connecticut

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, (610) 337–5355; fax (610) 337–5269; e-mail: *JAJ@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to The Connecticut Agricultural Experiment Station (Experiment Station) for Materials License No. 06–03754–01, to authorize release of the Johnson Laboratory in New Haven, Connecticut for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Johnson Laboratory, New Haven, Connecticut facility for unrestricted use. The Experiment Station has been authorized by NRC since July 9, 1958 to use radioactive materials for research and development purposes at the Johnson Laboratory. On September 4, 2003, the Experiment Station requested that NRC release the facility for unrestricted use. The Experiment Station has conducted surveys of the facility as required by 10 CFR Part 20 and performed an assessment of residual contamination, and has determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to release the facility for unrestricted use. The NRC staff has evaluated the Experiment Station's request, and the results of the surveys and the assessment, and has concluded that the completed action complies with Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML040840072, ML032541028, ML032790538, ML033630602 and ML040830619). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at King of Prussia, Pennsylvania this 24th day of March, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–7315 Filed 3–31–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 149th meeting on April 20–22, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The schedule for this meeting is as follows:

Tuesday, April 20, 2004

1 p.m.–1:10 p.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

1:10 p.m.–2:40 p.m.: Update on West Valley and Performance Assessment (PA) Plan (Open)—The Committee will hear from representatives of the NRC staff on the West Valley Demonstration Project and its Performance Assessment plans.

2:55 p.m.–4:30 p.m.: Risk-Informed Regulation for NMSS Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC NMSS Risk Task Group regarding the current status of incorporating risk-informed regulations in NMSS activities.

4:45 p.m.–6 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting regarding reports on West Valley Performance Assessment Plans, Risk-Informed Regulation for NMSS Activities, Biosphere Working Group, Public Interactions during November 2003 Nevada Field Trip (tentative), and ACNW Annual Report on Waste-Management-Related Research.

Wednesday, April 21, 2004

8:30 a.m.–8:40 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:40 a.m.–10 a.m.: EPA, 40 CFR Chapter 1, Advance Notice of Proposed Rulemaking (ANPR) ''Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste'' (Open)—The Committee will hear an information briefing by a representative of the EPA on its proposed ANPR which discusses alternatives for the disposal of waste containing low concentrations of radioactive material.

10:15 a.m.–11:15 a.m.: Update on Risk Insights (Open)—The Committee will hear a briefing by and hold discussions with the NRC staff on the recently published HLW Risk Insights Report.

11:15 a.m.–12:15 p.m.: DOE Schedule for Responses to Key Technical Issue Agreements—The Committee will hear a briefing by and hold discussions with a DOE representative on their amended timetable for responding to the 293 KTI agreements.

2 p.m.–4 p.m.: DWM Evaluation of DOE Bundling Approach (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on its evaluation of the DOE Bundling Approach. It is anticipated that the Biosphere bundle will be used as a representative sample.

4:15 p.m.–6 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

Thursday, April 22, 2004

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–12 Noon: Preparation of ACRS Report. (Open)—The Committee will continue its discussion of the proposed ACNW letter reports.

12 Noon–12:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59643). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. e.t., as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are

available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2004 are provided below.

ACNW meeting No.	Meeting dates
150	May 25–27, 2004.
151	June 22–24, 2004.
152	July 20–22, 2004.
	August 2004—No Meeting.
153	September 21–23, 2004 (Las Vegas, Nevada).
154	October 19–21, 2004.
	November 2004—No Meeting.
155	December 7–9, 2004.

Dated: March 26, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–7313 Filed 3–31–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors will hold a joint meeting on April 22, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 22, 2004—8:30 a.m. until 2:30 p.m.

The purpose of this meeting is to discuss the proposed staff guidance on Good Practices for Implementing Human Reliability Analysis (HRA) and development of data for Human Event Repository and Analyses (HERA). The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Bhagwat P. Jain (telephone 301/415–7270), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 26, 2004.

Medhat M. El-Zeftawy,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–7314 Filed 3–31–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. C2004–1; Order No. 1399]

Periodicals Rate Complaint

AGENCY: Postal Rate Commission.

ACTION: Notice and order on new complaint docket.

SUMMARY: This document announces the Commission's intention to hold hearings on a formal complaint filed by several major Periodicals mailers. The complaint concerns the alleged inconsistency of certain Periodicals rates with several provisions of the Postal Reorganization Act, given several developments affecting the viability of the longstanding rate structure. The Commission also announces several related procedural steps.

DATES: 1. Deadline for filing direct testimony: April 26, 2004.

2. Deadline for filing notices of intervention: May 21, 2004.

ADDRESSES: File all documents referred to in this order electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, 202–789–6818.

SUPPLEMENTARY INFORMATION: *Summary.* Five mailers who make extensive use of Outside County Periodicals rates have lodged a formal complaint with the Commission pursuant to section 3662 of the1970 Postal Reorganization Act (the Act or the PRA).[1] They assert that the Complaint ''concerns fundamental reform of the Periodicals rate structure'' in the interest of achieving greater conformity with statutory rate making provisions. Complaint at 4. Complainants contend that the need for such reform is clear, as is the path that should be taken to achieve it. They seek hearings on their allegations regarding the inefficacy of the rate structure and other relief consistent with their claims, including the potential adoption of an alternative rate schedule.

The Commission accepts the Complaint under section 3662, over the Postal Service's objection, and announces its intention to hold hearings under section 3624 to determine whether the allegations in the Complaint are valid.[2] If the Commission finds that to be the case, it will issue a recommended decision on classification changes under section 3623. This decision will not include a rate recommendation.

I. The Time Warner Inc. et al. Complaint

The Complaint includes information addressing applicable Rule 83 provisions, such as identification of the Complainants; a statement of the grounds for the complaint and the

[1] Complaint of Time Warner Inc., Condé Nast Publications, a Division of Advance Magazine Publishers Inc., Newsweek, Inc., The Reader's Digest Association, Inc. and TV Guide Magazine Group, Inc. Concerning Periodicals Rates, January 12, 2004 (Complaint). These mailers are also collectively referred to in this order as Complainants.

[2] The American Postal Workers Union, AFL–CIO (APWU), in a February 13, 2004 letter addressed to the Secretary of the Commission, expressed its opposition to the Complaint. Reasons include the Complaint's reliance on Docket No. R2001–1 rate case assumptions; concern that the proposal is a ''radical departure'' from the current methodology; the possibility of establishing a poor precedent; the absence of an allegation that current Periodicals rates are illegal; and the alleged inappropriateness of the Commission's interference in the discussion process. The rules of practice do not specifically authorize the APWU's filing at this point in the absence of a motion, but the Commission accepts it and has considered the points it raises in reaching its conclusions.

statutory policies at issue; a description of similarly affected classes of persons; and a description of the relief sought. As part of the stated grounds, it provides detailed observations on numerous Periodicals issues and initiatives, including developments leading to the creation of a joint Periodicals Task Force, a description of certain Task Force recommendations, and comments on AFSM 100 productivity.[3] Complaint at 17–18.

The filing also includes two exhibits, an extensive evidentiary proffer, and two attachments. Exhibit A is a multi-year comparison of Periodicals costs and inflation; Exhibit B is the Complainants' proposed alternative rate schedule for Outside County Periodicals Non-Letters. The evidentiary proffer announces the Complainants' readiness to sponsor the testimony of the following expert witnesses: Robert W. Mitchell (TW *et al.*–T–1) on Periodicals rate design; Halstein Stralberg (TW *et al.*–T–2) on the development of Periodicals costs; John Steele Gordon (TW *et al.*–T–3) on the impact of technological progress on ''the widespread dissemination of information'' in the United States; and Joe Schick (TW *et al.*–T–4) on the impact on smaller publications and their printers of eliminating the unzoned editorial pound rate. The proffered testimony of witnesses Mitchell and Stralberg appear, for information, as Attachments A and B to the Complaint. Related workpapers have been filed with the Commission's docket section as library references. Complainants indicate the testimony of the other witnesses they have identified can be provided reasonably soon.

A. Grounds for Filing the Complaint

Reasons for seeking reform. Complainants claim that the need for reform —and deficiencies that underlie that need—''have grown increasingly evident'' over the last two decades. In support of this contention, they cite historical trends showing increases in mail processing costs and declines in mail processing productivity, despite extensive efforts by the Postal Service and mailers to achieve more efficient Periodicals handling. Id. at 4–5 (fn. omitted). They point to the Service's apparent belief that rate design changes are needed to address inefficiencies in the Periodicals class, given repeated rate and classification filings pursuing various alternatives. Id. at 5. They also note successive reductions the Commission has made in Periodicals cost coverage. However, they observe that ''with coverage barely above 100 percent since the [Docket] No. R97–1 rates went into effect, virtually no leeway remains for the Commission to shield mailers in this way from the problems of the subclass or deficiencies in its rate structure.'' Ibid.

Inefficient price signals. Complainants identify inefficient price signals as a significant deficiency in the underlying rate structure. They say these signals stem from a longstanding focus on whether Periodicals costs are piece-or pound-oriented. However, they assert that improvements in cost analysis over the past decade, along with advances in postal mechanization, now show that costs are determined ''in meaningful and systematic ways'' by factors other than the basic piece/pound distinction. These include how bundles, sacks and pallets are made up, including related presort levels, and associated interactions, such as mailing entry points. Id. at 6. Given that recognition of these cost-causing factors in current rates is extremely limited, Complainants assert that mailers cannot make efficient mailing decisions, and should not be expected to do so. Ibid.

Consequently, Complainants argue that the price signals in the existing rate structure are not only inconsistent with cost incurrence as now understood, but inconsistent to the point that they impair the value of Periodicals mail service in two ways: by raising costs and by failing to recognize the way Periodicals mail is prepared. They assert that neither result is contemplated by the Postal Reorganization Act. Ibid.

Obsolete and counterproductive unzoned editorial pound rate. Complainants regard the unzoned editorial pound rate, which dates to 1917, as another serious deficiency. They characterize it as ''a substantial impediment to the development of a more efficient Periodicals rate structure and an anomalous element that complicates and sometimes defeats coherent Periodicals rate design.'' Id. at 9. They note that the Commission has recognized that this feature imposes certain inefficiencies, but has declined to approve proposed changes based on references in sections 101(a) and 3622(b)(8) to ''widespread dissemination of information'' as a means of ''binding the Nation'' and out of a concern for certain mailers.

Complainants make three related assertions on this point. One is that the record on the unzoned editorial pound rate in previous Commission proceedings is deficient because it does not adequately address historical, cultural, technological and legal developments since 1917. Id. at 10. Another is that the decision in *Mail Order Ass'n. of America* v. *United States Postal Service,* 2 F.3d 408 (D.C. Dir. 1993) significantly undermined the Commission's rationale for maintaining the unzoned editorial rate preference. Id. at 11–12. A third claim is that changes since Docket No. R90–1 cast doubt on whether the unzoned editorial rate currently generates policy benefits that outweigh the burdens it imposes in derogation of other policies of the Act, or even advances the policies of the Act at all. These changes include the availability of pool shipments, the emergence of mass media, and the burgeoning information revolution. Id. at 10.

Complainants contend that reconsideration in light of current knowledge and circumstances will demonstrate that maintaining an unzoned editorial rate for the purpose of fostering ''widespread dissemination of information'' via Periodicals:

—Is no longer a useful, or even explicable, way of recognizing or promoting the educational, cultural, scientific and informational value (ECSI) of Periodical publications;
—Provides a rate benefit to long-haul publications only at the cost of imposing complementary rate burdens on similarly situated short- and average-haul publications, in derogation of the recognition owed to the ECSI element of those publications under section 3622(b)(8), as well as the requirement that rates and classifications be fair and equitable, as set out in sections 3621, 3622(b)(1) and 3623(c)(1);
—Imposes substantial operational and pricing inefficiencies on the Postal Service and the Periodicals subclass as a whole; and
—Creates substantial obstacles to a rational, comprehensible, economically coherent Periodicals rate design, in derogation of section 3622(b)(7). Id. at 13.

B. Evidentiary Proffer

Complainants state that they are prepared to present evidence supporting their contention that pertinent improvements in rate elements would bring about efficient changes on the part of mailers and would bring rates into closer conformity with the Act. This includes the Mitchell, Stralberg, Gordon and Schick testimonies. They note, in particular, that witness Gordon's testimony will show how a century of technological, economic and social progress has ''transformed the conditions * * * thought to justify an unzoned editorial rate.'' Id. at 9.

[3] AFSM 100 equipment is the Service's newest mechanized flat sorting equipment.

Complainants consider the improvements they propose meritorious in their own right, quite apart from other factors affecting mailers, but further claim that ''the unprecedented and unexplained Periodicals cost and rate increases of recent years make it all the more important to explore every available path of progress.'' Ibid.

C. Main Elements of the Proposed Alternative Rate Structure

Complainants assert that the following ''simple remedies'' will make Periodicals rates far more reflective of associated costs. These changes are reflected in their Exhibit B rate schedule, and include:

—Establishing separate charges for the bundles, sacks and pallets used in each mailing, instead of deriving all Periodicals revenue from piece and pound charges;
—Recognizing both bundle and container presort levels, as well as the effect of the mailing's entry point, on costs incurred;
—Recognizing the importance of AFSM 100 machinability for non-carrier route flats; and
—Continuing a preference for editorial content in Periodicals, but allowing publications with high editorial content to earn lower rates by entering mail closer to its final destination.

Id. at 7.

Complainants acknowledge that their proposal includes more rate elements than the current structure, but say it ''would allow simplification of the ever more complex mail preparation requirements.'' Id. at 8. They also assert that their proposal is not a complete solution, and suggest that the Service ''may possess more recent cost and mail-characteristics data with more accurate unit cost estimates.'' Ibid.

D. Relief Sought; Basis for Jurisdiction

Requested relief. Complainants seek hearings on their complaint under section 3624 of the Act and issuance of a decision, under sections 3622, 3623 and 3625 of the Act, recommending the adoption of cost-based Periodicals Outside County rates that (1) more fully reflect differences in operational and cost-causing characteristics within the Periodicals Outside County subclass; (2) discontinue the policy of maintaining an unzoned editorial pound rate; and (3) promote more efficient methods of mail preparation and entry by sending mailers better price signals. Id. at 21.

Jurisdiction. Complainants assert that the Commission's jurisdiction to hear this matter is founded on 39 U.S.C. 3662, 101(a) and (d), 403(a) and (c), 3622(b)(1)–(8), and 3623(c)(1). Id. at 19. Section 3662 establishes the Commission's authority to hear rate and service complaints. The other referenced provisions address various policies, such as ''Nation binding,'' fairness and equity of rates and classifications, efficient services, and recognition of the degree of mail preparation. These provisions are set out in the body of the Complaint. Id. at 19–20.

In addition, the Complainants cite with approval the following Commission statement on jurisdiction:

> In a Section 3662 complaint, the rate at issue need not be per se ''unlawful,'' before changes may be recommended. In each case, the Commission will evaluate the relevant facts and circumstances, and determine whether the policies of the Act, on balance, call for the recommendation of a change in rates.

Id. at 2, fn. 1, citing PRC Op. C99–4, Opinion and Recommended Decision on Complaint of Continuity Shippers Association, April 14, 2000, at 13.

III. Postal Service Answer

The Postal Service filed its Answer to the Complaint on February 11, 2004.[4] Therein, it states that it does not oppose improved efficiency in Periodicals rate design; believes more can be done in this regard; and says it is exploring many of the structural changes Complainants propose. Answer at 2. At the same time, it opposes any form of Commission action on the Complaint at this time, other than summary dismissal. The Service cites an array of legal, policy and practical considerations in support of its position. The most serious of these are alleged deficiencies in the form and substance of the pleading.

Alleged flaws in the Complainants' filing. The Service asserts that under the clear meaning of the language of section 3662 and Commission rules, the threshold question in any rate and service complaint must be whether the existing rates are unlawful, not whether some alternative set of rates would constitute an improvement. Id. at 3–4. It claims, however, that the instant filing ''appears premised on the supposition that adoption of their proposed changes would constitute an improvement over the current rates, rather than any well-grounded allegation that the current rate structure is unlawful.'' Id. at 4. It therefore argues that the Complaint fails to establish the necessary foundation for conducting a section 3662 rate complaint proceeding: namely, specific and colorable allegations that the existing rates fail to conform to specific policies of the Act. Id. at 6.

The Service claims that this failure not only prevents Complainants from establishing the only statutory basis for proceeding under section 3662, but also precludes the Service from meeting its obligations under the Commission's rules. Id. at 2–3. In particular, it asserts that Complainants do not specifically allege that existing rates, fees, or classifications for Periodicals mail do not conform to specific policies in the Act. Instead, the Service says the Complainants explicitly indicate that the status quo conforms to those policies because they state that the purpose of their alternative is ''to achieve greater conformity'' with the ratemaking provisions of the Act. Id. at 3. It also says critical factual allegations are never clearly articulated in a format to which the Postal Service can directly respond, but instead ''the factual foundations * * * consist of broad discussions of complex and interrelated histories of operations and finances, as well as convoluted technical analyses and quantitative derivations forming the bases for alternative rate proposals.'' Id. at 6–7. As such, the Service says they do not lend themselves to the type of answer typically expected in section 3662 proceedings or contemplated by the Commission's rules. In addition, it asserts that by avoiding compliance with these ''strict guidelines,'' Complainants have failed to perfect their attempts to lawfully invoke the complaint procedures, and have failed to carry even the minimal burden of justifying the Complaint in the first instance. Id. at 8.

Contentions regarding section 3662 jurisdiction. The Service asserts that the Complaint is really an attempt to initiate broad-based rate and classification changes across the Outside County Periodicals subclass, and therefore ''falls conspicuously outside the range of cases contemplated to be entertained pursuant to section 3662.'' Ibid. In fact, it says that such treatment would violate both sections 3622(a) and 3628 of the Act. In an extended discussion, the Service presents its views on the regulatory scheme set out in the statute, attendant rights and responsibilities of the respective agencies, and section 3662's purported status as a limited ''safety valve.''

Moreover, the Service claims section 3628 is clearly intended as the exclusive channel for review of rate case matters. It dismisses Commission statements suggesting that section 3628 does not preclude it from reviewing rate and related classification issues within a complaint proceeding. Id. at 17, citing

Order No. 1310, Docket No. C2001–2, April 27, 2001, at 13–14. Given this position, the Service says that since the combined classification and rate structure the complainants now propose to improve was established (or, at the least, reestablished) in the last omnibus rate proceeding, it was incumbent upon any party challenging that structure to pursue those types of issues then, up to and through the judicial review provisions of section 3628. Id. at 16–18 (citing the legal doctrines of *res judicata* and collateral estoppel).

Opposition to the initiation of a mail classification proceeding. The Service acknowledges that the Commission has the option to consider the filing as if it were a petition to institute a classification proceeding pursuant to section 3623, but encourages it to decline to do so. In support of this position, the Service says the next omnibus rate case will provide a vehicle for consideration of the Complainants' concerns. It also contends that the absence of such a proceeding would allow it to continue consultations with all Periodicals mailers to develop a Periodicals rate and classification proposal for future consideration by the Commission. Id. at 20–21. Finally, the Service says deferring consideration of these issues would allow it to determine whether co-mailing and co-palletization can provide Periodicals mailers with the efficiency-related ''choices'' that underlie the Periodicals redesign proposed in the Complaint. Id. at 21.

If the Commission does hold a hearing, the Service suggests that it may parallel, at least in some respects, progress the Service is making on similar issues with mailers. Id. at 21–23. It also says that since smaller publications can be expected to strongly oppose the Complaint's substantive proposals, the opportunity to include them may be lost. Id. at 23.

IV. Discussion

A pivotal question in any filing before the Commission is whether jurisdiction lies. In this case, the Postal Service asserts that the Complainants have failed to make the requisite jurisdictional showing because there is neither an ''unambiguous claim'' that existing rates do not conform to applicable policies, nor adequate identification of the policies that are implicated. Moreover, it believes that Complainants' reliance on a Commission statement, in PRC Op. C99–4, regarding the scope of section 3662 is misplaced. It contends the Commission's view is not a legally supportable position. Id. at 4, fn. 2 (referring to Complaint at 2, citing PRC Op. C99–4, April 14, 2000, at 13).

The Commission concludes that no fundamental flaws in the filing preclude its acceptance for the purpose of determining whether the concerns it raises are justified. The Service's contention that Complainants have failed to invoke jurisdiction because they have not used several ''magic words'' is not persuasive.[5] First, it invokes the ''plain meaning'' of a statutory provision only at the expense of a ''plain reading'' of the entirety of the pleading. The Complaint raises a sophisticated, not simplistic, claim. Thus, the Service's near-exclusive focus on one or two phrases in the Complaint ignores its very core: a challenge to the continued efficacy of Outside County Periodicals rates, given a structure that may be so outmoded and inapposite that the rates it generates *ipso facto* violate controlling provisions of the Act. Considered in this light, the Complainants' reliance on the Commission's previous statement regarding its responsibility to evaluate relevant facts and circumstances is not misplaced.

Failure to identify policies, as required by Rule 83. The Service also contends that Complainants have failed to comply with Rule 83 in certain respects, including a failure to identify the policies they believe are involved. Complainants devote more than a page of their pleading to setting out specific provisions of the Act, in addition to citing them in the text. The pleading also contains substantial discussion about why Complainants contend that consistency with these policies is lacking. Given these circumstances, the Service's argument must be rejected.

Technical compliance. The Service is correct that the filing does not necessarily conform to the format used by others. However, Rule 83 speaks to required information, rather than a set format. The Complainants have provided their full name and address in compliance with Rule 83(a). Complaint at 2–4. In the Commission's view, they have provided, throughout their extensive filing, a full and complete statement of their grounds, including specific reference to the postal rates involved and the policies to which it is claimed they do not conform. They have described all persons or classes of persons known or believed to be similarly affected (Outside County Periodicals mailers), in compliance with Rule 83(c). Id. at 5 and 18–19 (and elsewhere). They have provided a statement of the specific relief or redress requested, in compliance with Rule 83(d). Id. at 1 and 21. No copies of the type of correspondence referred to in Rule 83(e) have been provided. The Commission assumes this is because none exists. If this is not the case, Complainants should supplement their filing in this respect.

Given the foregoing assessment, the Commission concludes that the Service's assertion that technical deficiencies foreclose Complainants from having set out colorable claims is unfounded.

Effect of practical obstacles on holding a hearing. The Service notes that there are several practical considerations the Commission should consider. These include the inability to recommend rates if it proceeds with this Complaint; the possibility of redundant discussions on some issues, as the Service and mailers may continue independent talks; ongoing pallet experiments; strong objections from small mailers; and the ability to address issues the Complaint raises in the next omnibus rate case.

The Commission finds that these considerations are not persuasive reasons to refrain from holding hearings. The inability to recommend rates in a classification case initiated by the Commission is a statutory reality. *Dow Jones* v. *United States Postal Service,* 656 F.2d 786, 790 (D.C. Cir. 1981). This was a contributing factor in a recent Commission decision to forego initiating a proceeding on non-postal services, *see* Order No. 1388 (January 16, 2004), but the totality of the circumstances indicate a different result is appropriate here. This is a complaint that raises basic issues about the efficacy and legality of a current rate structure applicable to an entire class of mail. The Commission will consider these issues, ask for and review data as appropriate to inform our deliberations, and if necessary recommend changes to that structure.

Nonetheless, practical considerations lead the Commission to conclude that this inquiry should not result in the recommendation of specific rates. Foremost among these considerations is the importance of avoiding unnecessary disruption to the businesses of both

[5] The Service alludes to the possibility that use of the words ''greater conformity'' rather than something unambiguous may be an ''artful dodge'' by two or more individual Complainants who consider themselves bound to not object to the current rate structure by virtue of being signatories to the Docket No. R2001–1 settlement. The Commission has no response to this, other than to note the clear evidence that the Complainants have read, and apparently agreed, with the Commission's statement, in PRC Op. C99–4 at 13, that the rate at issue in a section 3662 complaint need not be per se ''unlawful'' before changes may be recommended. *See, for example,* Complaint at 2.

Periodicals mailers and the Postal Service. Before the type of sweeping changes suggested by Complainants are implemented, substantial time must be allowed for mailer education on the new design, as well as on use of new mailing statements that would have to be designed and distributed. Postal facilities would have to prepare for an altered mailstream. Publishers and printers must have adequate opportunity to alter their mailing practices in recognition of any new rate structure prior to its implementation.

Given the industry's concerns about any rate increases in the current economic climate, Commission consideration of potential changes in specific rates in the context of this complaint would be likely to obscure the careful review of more important structural concepts. Proceeding to review the effects of the current and proposed rate structures on economic efficiency and the various public policies of the Act as a first step, before attempting to design actual rates, is most likely to allow for efficient evaluation of relevant and material issues. If a new structure is found appropriate, the period for education and preparation can begin while specific rates are being developed.

There is widespread recognition that the Postal Service is planning on submitting an omnibus rate request shortly. In the interim, it may be possible to develop and analyze additional cost and volume data that may be identified as necessary for use in that case. Further, issues resolved in this case can perhaps be implemented in that case. Regardless of the timing of additional dockets the importance of avoiding potential widespread confusion attendant to implementing a new rate design without allowing substantial time for mailer education and preparation, convince the Commission that it is best to forego any specific rate recommendations in response to this Complaint. If this Complaint is found to be justified, the most proper course of action for the Commission will be to recommend to the Governors classification changes that describe and define a rate structure more consistent with the policies of the Act. This will allow the Postal Service to develop in the first instance rates designed to fairly implement the new rate structure.

The fact that discussions may occur in other forums while a Commission proceeding is underway may dilute attention in some respects, but may energize the inquiry in other ways. In addition, Commission proceedings offer significantly more potential for open and public discussion than might be the case with some industry/Postal Service talks. Data from ongoing pallet experiments could presumably be introduced into the hearing record as it becomes available, so no party would appear to be disadvantaged by a parallel complaint hearing on pallet-related issues.

Two other factors cited as obstacles—the likelihood of strong objections from some mailers and the ability to consider issues raised here in a future rate case—actually present no greater hurdles than they would in any circumstance. In fact, the Commission's assigned statutory role is to serve as a forum for matters that are often inherently contentious, and it is no stranger to opposition from mailers who oppose various proposals and initiatives, be they in the category of large or small. Past experience indicates that the Commission allows all parties' concerns to be aired, and this proceeding will be no different. Finally, not postponing consideration of the potential need for significantly revised rate structure to the next omnibus case avoids at least two difficulties. One is that interested mailers and the Commission are not likely to be as preoccupied by myriad other, complex controversial issues such as are present in omnibus rate cases. Additionally, outside the context of the 10-month statutory time frame of a rate case, there is considerably more leeway in almost all aspects of scheduling. This should result in the most complete and balanced record possible for analyzing the issues raised by Complainants.

IV. Preliminary Procedural Matters

Hearings. The anticipated scope of this case encompasses matters raised in the Complaint, as well as other issues found to be germane. This proceeding will address concerns about the efficacy of the rates generated by the current structure in light of:

- The extremely low cost coverage the class has been assigned in recent rate decisions;
- Persistent, disproportionate increases in Periodicals mail processing costs;
- Recent trends in mail processing productivity; and
- The impact of the unzoned (or ''flat'') editorial pound rate on the Commission's ability to recommend rates that are consistent with the statutory ratemaking criteria.

Status of Time Warner Inc. et al.'s proffered testimony. Complainants are directed to file all testimony, including that already provided as attachments to its Complaint with the Commission no later than 30 days from the date of this Order.

Representation of the general public. In conformance with section 3624(a) of title 39, U.S. Code, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Request related to Complaint format and Rule 84 obligations. The Commission has considered the Service's request that, at a minimum, Complainants be required to recast their filing in a manner that facilitates an admission or denial pursuant to Rule 84. The motivation for this request appears to be a concern that the Complaint's format may place the Service's compliance with Rule 84 in jeopardy because its February 11, 2004 Answer does not admit or deny any factual allegations. It notes that Commission rules indicated that the absence of an explicit response in its Answer may be deemed to be an admission of some fact. Answer at 13–14, fn. 8.

Rule 84 serves at least two main purposes: it is a formal avenue for the Service to address matters raised in a complaint, and a vehicle for the Commission to make certain procedural and substantive determinations. As a general observation, the Commission notes that the Answer the Service has provided conveys a clear grasp of the legal and technical issues involved in the Complaint, a full understanding of attendant consequences, and the ability to identify alternative courses of action. To the extent the Service is concerned about admissions by default, the Commission states that, given the circumstances presented by the format of the filing in this case, it is waiving the applicability of that portion of Rule 84. Accordingly, the Service's objection on this ground is moot.

The Complainants will not be directed to recast their pleading. To the extent the Service's request that this be done derives from the fact that two proffered pieces of testimony were attached to the Complaint, it is moot. The Service is not expected to address those evidentiary proffers at this time. To the extent the request grows out of the claim that specific policies of the Act have not been identified, the

Commission finds this contention plainly erroneous. The body of the Complaint identifies and quotes numerous policies; moreover, the discussion includes explanations of which policies are implicated and why this is so. Complaint at 19–20. Finally, the fact that discrete paragraphs are not numbered, as they have been in some complaint filings, does not appear to significantly impede a response.

Request for opportunity for comments from others. The Service suggests that the Commission provide an opportunity for others to comment prior to instituting proceedings on the Complaint. The Commission believes that sufficient facts and information have been placed before it via the Complainants' pleading and the Service's February 11, 2004 Answer. Interested parties will have an opportunity to address issues of concern to them throughout the hearing process.

Intervention; hearing. Those wishing to be heard in this matter are directed to submit a notice of intervention, on or before May 21, 2004, via the Commission's Filing Online system, which can be accessed electronically at *http://www.prc.gov.* Persons needing assistance with Filing Online may contact the Commission's Docket Section at 202–789–6846. Notices shall indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a. The Commission anticipates holding a hearing in this case. To assist the Commission in making decisions relative to this determination, participants are directed to indicate, in their notices of intervention, whether they intend to participate in the hearing and the nature of that participation. Pursuant to rules 26–28, participants may initiate discovery following the submission of Complainant's testimony.

Public notice. The Commission directs the Secretary to arrange for publication of this Order in the **Federal Register**.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. C2004–1, Periodicals Rate Design, to consider matters raised in the Complaint of Time Warner Inc. *et al.* and other germane issues.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is May 21, 2004.

4. Notices of intervention shall indicate whether the intervening party intends to participate in the hearing, and the nature of that participation.

5. The deadline for filing direct testimony is 30 days from the date of this order.

6. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

7. The Secretary shall arrange for publication of this document in the **Federal Register**.

Dated: March 26, 2004.

Steven W. Williams,

Secretary.

[FR Doc. 04–7265 Filed 3–31–04; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collections; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections. The information collections numbered below are pending at RRB and will be submitted to OMB within 60 days from the date of this notice.

Comments are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Earnings Information Request; OMB 3220–0184

Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

The RRB utilizes form G–19–F, Earnings Information Request, to obtain earnings information not previously or erroneously reported by a beneficiary. Completion of the form is required to retain a benefit. One response is requested of each respondent. The RRB proposes minor non-burden impacting editorial changes to Form G–19–F.

The RRB estimates that 1,000 G–19–F's are completed annually at an estimated completion time of eight minutes per response. Total respondent burden is estimated at 133 hours.

2. Title and Purpose of Information Collection

Self-Employment and Substantial Service Questionnaire; OMB 3220–0138

Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. A disability applicant must give up all railroad work, but does not have to relinquish rights to return to railroad work until he or she attains full retirement age, or, if earlier, a spouse annuity or supplemental annuity becomes payable. Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a ''Last Pre-Retirement Non-railroad Employer''(LPE). LPE is the last person, company or institution with whom an employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. However, Section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from a ''LPE'' employer.

The RRB utilizes Form AA–4, Self-Employment and Substantial Service Questionnaire to obtain information needed to determine if the applicant's work is LPE, railroad service or self-employment. If the work is self-employment, the questionnaire identifies any months in which the applicant did not perform substantial service. One response is requested of each respondent. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. The RRB proposes no changes to Form AA–4.

The completion time for the AA–4 is estimated at between 40 and 70 minutes. The RRB estimates that approximately 600 AA–4's are completed annually. Total respondent burden is estimated at 415 hours.

3. Title and Purpose of Information Collection

Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain additional information needed to investigate a claim for unemployment benefits when the claimant indicates on RRB Form UI–1, Application for Unemployment Benefits and Employment Service (OMB 3220–0022) that he has voluntarily left work. Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent. The RRB proposes to revise UI–45 by adding an item, ''Reason for Leaving'', at the end of the column in Section 2. This item requests the employee to provide the reason they left their prior employment. This information helps the RRB determine whether the claimant left work voluntarily and with good cause. No other changes are being proposed.

The completion time for the UI–45 is estimated at 15 minutes per response. The RRB estimates that approximately 2,900 responses are received annually. Total respondent burden is estimated at 487 hours.

FOR FURTHER INFORMATION CONTACT: To request more information regarding any of the information collections listed above or to obtain copies of the information collection justifications, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collections should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–7361 Filed 3–31–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26403]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 26, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 20, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Emigrant Securities Corp. [File No. 811–9559]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Between October 16, 2003 and December 3, 2003, applicant distributed an amount equal to $1000 per share, plus all accrued and unpaid dividends, to its preferred shareholders in complete liquidation of their interests. Applicant then distributed all of its remaining assets to its sole common shareholder at net asset value. As of March 19, 2004, applicant had 24 preferred shareholders who have not surrendered their stock certificates. Funds in an amount sufficient to make the remaining liquidating distributions have been transferred to an escrow account and will be paid to such shareholders when they surrender their stock certificates. Expenses of $67,000 incurred in connection with the liquidation were paid by Emigrant Savings Bank, applicant's indirect parent company.

Filing Dates: The application was filed on December 19, 2003, and amended on March 19, 2004.

Applicant's Address: 5 East 42nd St., New York, NY 10017.

Advantus Money Market Fund, Inc. [File No. 811–4141]; Advantus Horizon Fund, Inc. [File No. 811–4142]; Advantus Index 500 Fund, Inc. [File No. 811–7815]; and Advantus Enterprise Fund, Inc. [File No. 811–8588]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 8, 2003, each applicant transferred its assets to a corresponding series of Ivy Funds, Inc. based on net asset value. Expenses of $61,960, $57,148, $64,532, and $72,352, respectively, were incurred in connection with the reorganizations and were paid by Advantus Capital Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on March 10, 2004.

Applicants' Address: 400 Robert Street North, St. Paul, MN 55101.

Advantus Mortgage Securities Fund, Inc. [File No. 811–4140]; Advantus Spectrum Fund, Inc. [File No. 811–4143]; Advantus Bond Fund, Inc. [File No. 811–5026]; Advantus Venture Fund, Inc. [File No. 811–7817]; Advantus Cornerstone Fund, Inc. [File No. 811–8586]; and Advantus Real Estate Securities Fund, Inc. [File No. 811–9139]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 8, 2003, each applicant transferred its assets to a corresponding series of Ivy Funds, based on net asset value. Expenses of $264,346, $98,951, $43,675, $122,055, $115,715, and $137,792, respectively, incurred in connection with the reorganizations were paid by Advantus Capital Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on March 10, 2004.

Applicants' Address: 400 Robert Street North, St. Paul, MN 55101.

Van Kampen U.S. Government Trust for Income [File No. 811–6724]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 13, 2002, applicant transferred its assets to Van Kampen Government Securities Fund, based on net asset value. Expenses of $204,538 incurred in

connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on January 21, 2004, and amended on March 11, 2004.

Applicant's Address: 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

Van Kampen Senior Floating Rate Fund [File No. 811–8589]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 13, 2003, applicant transferred its assets to Van Kampen Senior Loan Fund (formerly known as Van Kampen Prime Rate Income Trust), based on net asset value. Expenses of $410,065 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on January 21, 2004, and amended on March 11, 2004.

Applicant's Address: 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

PIMCO Diversified Income Fund [File No. 811–21361]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on February 9, 2004, and amended on March 9, 2004.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Separate Account Ten of Integrity Life Insurance Co. [File No. 811–08645]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders on December 5, 2003 approved applicant's merger with another fund, and applicant distributed its assets on December 15, 2003. The fund surviving the merger is the Touchstone Enhanced Dividend 30 Fund. Touchstone Advisors. Inc., investment adviser to Separate Account Ten of Integrity Life Insurance Company, paid expenses of $102,000 incurred in connection with the merger.

Filing Date: The application was filed on January 22, 2004.

Applicant's Address: 515 West Market Street, Louisville, KY 40202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7274 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

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 meeting during the week of April 5, 2004:

A Closed Meeting will be held on Tuesday, April 6, 2004 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the 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), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, April 6, 2004 will be: Formal orders of investigation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; an adjudicatory matter; and a litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 29, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7483 Filed 3–30–04; 1:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27823]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 26, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 20, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp. (70–10205)

Notice of Proposed Amendments to Governance Documents and Termination of Shareholder Rights Plan; Order Authorizing Solicitation of Proxies

FirstEnergy Corp. (''FirstEnergy''), 76 South Main Street, Akron, Ohio, 44308, a registered holding company has filed a declaration under sections 6(a)(2), 7, and 12(e) of the Act and rules 54, 62 and 65 under the Act.

FirstEnergy requests authority to: (1) Amend its Amended Articles of Incorporation (''Articles'') and Amended Code of Regulations (''Regulations,'') and together with the Articles, ''Governing Documents'') to eliminate or modify certain so-called ''anti-takeover'' type provisions that were originally intended, at least in part, to force persons seeking to take control of FirstEnergy to initiate arm's length

discussions with the Board of Directors; (2) terminate its shareholder rights plan; and (3) solicit proxies (''Solicitation'') from its common shareholders for use at its annual meeting scheduled for May 18, 2004, and at any adjournment(s), in connection with (a) the proposed amendments to the Governing Documents and (b) certain executive compensation plans (and related amendments) providing for the issuance of shares of FirstEnergy common stock.

I. Requested Authority

A. Amendments to Governing Documents

FirstEnergy proposed to amend its Governing Documents to declassify its Board of Directors and eliminate certain supermajority shareholder voting requirements.

1. Declassification of Board Directors

FirstEnergy's Regulations currently provide that the Board of Directors is to be divided into three classes with the members of each class serving three-year terms. The Board currently consists of fifteen members divided into three classes. The Board of Directors has unanimously adopted resolutions, subject to shareholder and regulatory approvals, amending the Regulations to eliminate the classification of Board members. The proposal would allow for the annual election of directors beginning with the director slate to be voted upon at FirstEnergy's 2005 annual meeting. Directors who have been previously elected for three-year term so that no director previously elected to a multi-year would have his or her term shortened. Consequently, under the proposed amendments, the first class of directors to be elected to one-year terms would be in 2005. Directors standing for election in 2006 and 2007 would likewise be elected to one-year terms so that upon the conclusion of the annual meeting in 2007, the declassification of the Board would be complete and all directors would be subject to annual elections.

FirstEnergy states that a shareholder proposal to declassify the Board of Directors has been received by FirstEnergy and included in its proxy material each year since 1998. Each year, the Board of Directors has considered carefully the advantages and disadvantages of maintaining a classified board. FirstEnergy indicates that while the Board of Directors still believes that there are compelling reasons to maintain a classified board, in furtherance of its goal of ensuring sound corporate governance policies, after further consideration of the various arguments for and against a classified board, and in light of the amount of shareholder support for a similar proposal at the 2003 annual meeting, the Board has decided to propose declassifying the board. Approval of the proposal requires the affirmative vote of the holders of at least 80% of the voting power of FirstEnergy, voting as a single class.

2. Elimination of Certain Supermajority Voting Rights

FirstEnergy indicates that it will ask its shareholders to consider and vote upon a proposal to amend regulation 36 of the Regulations and to repeal Article X of the Articles, which relate to the voting requirements for amending or repealing certain provisions in the Governing Documents.

Currently the affirmative vote of 80% of the shares entitled to vote, voting as a single class (together, ''80% Supermajority'') is required to make certain amendments to the Governing Documents. FirstEnergy's Board of Directors is proposing that the 80% Supermajority voting requirements be changed in the Governing Documents to reduce the voting requirements to two-thirds, which is consistent with Ohio law. Approval of this proposal requires the affirmative vote of 80% of the shares entitled to vote.

Article X of the Articles establishes an 80% Supermajority requirement to amend or repeal the following provisions: (1) Article V—the fixing or changing of the terms of unissued or treasury shares; (2) article VI—The absence of cumulative voting rights in the election of directors; (3) article VII—the absence of preemptive rights to acquire unissued shares; and (4) article VIII—the ability of FirstEnergy to repurchase its shares. Similarly, regulation 36 of the Regulations also establishes an 80% Supermajority requirement to amend or repeal the following provisions: (1) Regulation 1—the time and place of shareholder meetings; (2) regulation 3(a)—the calling of special shareholder meetings; (3) regulation 9—the order of business at shareholder meetings; (4) regulation 11—the number, election and term of directors; (5) regulation 12—the manner of filling vacancies on the Board of Directors; (6) regulation 13—the removal of directors; (7) regulation 14—the nomination of directors and elections; and (8) regulation 31—the indemnification of directors and officers. Both article X and regulation 36 require an 80% Supermajority vote to be amended or repealed.

In addition, FirstEnergy's Board of Directors proposes to change the voting requirement in regulations 11 and 13. Currently, regulation 11 enables a change in the number of Directors of FirstEnergy and regulation 13 provides that any Director, or the entire Board, may be removed, in each case only by an 80% Supermajority vote. The Board of Directors proposes to reduce this in both cases to two-thirds.

FirstEnergy states that, while these protective measures are beneficial, the Board believes there are also compelling arguments for having a lower threshold for shareholder amendments to the Governing Documents. For example, in recent years some investors have expressed the view that a lower threshold for shareholder amendments in the Governing Documents may improve the corporate governance profile of FirstEnergy, in that it allows increased flexibility in responding to unforeseen challenges and increases shareholders' ability to effectively participate in corporate governance.

FirstEnergy indicates that similar amendments seeking to remove the 80% Supermajority voting requirement from the Regulations and the Articles have been proposed by FirstEnergy's shareholders in the past and have received support at Annual Meetings. Given the amount of shareholder support for the proposal and following careful assessment, FirstEnergy states that the Board of Directors has decided to propose the elimination of the 80% Supermajority voting requirement.

B. Termination of Shareholder Rights Plan

In November 1997, the Board of Directors of FirstEnergy authorized assignment of one share purchase right (''Right'') for each outstanding share of FirstEnergy common stock. The Rights are issued under to a Rights Agreement dated as of November 18, 1997 between FirstEnergy and The Bank of New York, as rights agent, (''Rights Agreement'') which was approved by the Commission (Holding Company Act Release No. 35–27694). Each Right entitles the registered holder of the associated share of common stock to purchase from FirstEnergy one share of common stock at a price of $70 per share (''Purchase Price'') when the rights become exercisable. The Rights, which currently expire on November 18, 2007, are not exercisable until a triggering event involving either an acquisition of 15% or more of the outstanding common stock of FirstEnergy by any person or group of associated persons (''Acquiring Person'') or the commencement or announcement of an intention to make a tender offer by any Acquiring person of at least 25% of the outstanding

common stock of FirstEnergy. In the event of a merger with, or other specified transaction (as described in the Rights Agreement) between FirstEnergy and an Acquiring Person, the holder of each Right would be entitled to receive, upon exercise of the Right, a number of shares of common stock of FirstEnergy or the Acquiring Person, as the case may be, having a value double the amount of the purchase price.

FirstEnergy's indicates that its Board of Directors has elected, subject to receipt of Commission authorization, to terminate the Rights Agreement through the acceleration of the expiration date of the issued Rights. FirstEnergy states that as is the case with previous shareholder proposals to declassify the Board of Directors and to eliminate the 80% Supermajority voting requirements, the Board of Directors has considered carefully the advantages and disadvantages of the Rights Agreement, and that while the Board of Directors still believes that there are compelling reasons to maintain the Rights Agreement, in furtherance of its goal of ensuring sound corporate governance policies, after further consideration of the various arguments for and against rights plans in general, and in light of the amount of shareholder support for a similar proposal at the 2003 annual meeting, the Board has taken action to accelerate the expiration date of the outstanding Rights to March 31, 2004, or such later date as the Commission issues an order. FirstEnergy indicates that no shareholder approval is needed to terminate the Rights Agreement.

II. Order for Solicitation of Proxies

FirstEnergy has requested that an order be issued authorizing commencement of the solicitation of proxies from the holders of the outstanding shares of common stock for approval of (1) the proposed amendments to the Governing Documents as discussed above, and (2) certain executive compensation plans (and related amendments) providing for the issuance of shares of FirstEnergy common stock. FirstEnergy's shareholders will be asked to approve FirstEnergy's existing Executive Deferred Compensation Plan, which was established by the Board of Directors in 1985, and Deferred Compensation Plan for Outside Directors, which was established by the Board of Directors in 1997 (collectively, ''Plans''). The Plans were previously approved by the Commission (Holding Company Act Release No. 35–27694). The Plans have not been previously approved by FirstEnergy's shareholders, as approval was not required. However, in order to comply with listing requirements of the New York Stock Exchange adopted in 2003, both Plans must be submitted to the shareholders for approval, because they contain a matching or bonus formula that credits additional shares of stock to a participant's account based on the amount of deferrals. The NYSE listing standards also require that these features contain either a fixed term of no more than ten years or a maximum share reserve. The Board of Directors is proposing to amend the Plans to add both of these features. These proposed amendments will not increase the number of shares of common stock or common stock equivalents that FirstEnergy is already authorized to issue.

It appears to the Commission that FirstEnergy's Declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

III. Rule 54 Analysis

The proposed transactions are subject to the requirements of rules 53 and 54 under the Act. Under rule 53(a), the Commission shall not make certain specified findings under sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of, or other interest in, an exempt wholesale generator (''EWG''), or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a)(1) through (a)(4) of rule 53 are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of rule 53 exists. Rule 54 provides that the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or foreign utility companies (''FUCOs'') in determining whether to approve other transactions if rule 53(a), (b) and (c) are satisfied.

FirstEnergy currently meets all of the conditions of rule 53(a), except for clause (1). By order dated October 29, 2001 (Holding Company Act Release No. 35–27459) (''Merger Order''), as modified by order dated June 30, 2003 (Holding Company Act Release No. 35–27694) (''June 2003 Order''), the Commission, among other things, authorized FirstEnergy to invest in EWGs and FUCOs as long as FirstEnergy's aggregate investment, as defined in rule 53(a)(1) does not exceed $5 billion. The $5 billion amount is greater than the amount which would be permitted by rule 53(a)(1) which, based on FirstEnergy's consolidated retained earnings, as defined in rule 53(a)(1), of $1.6 billion as of December 31, 2003 would be $800 million. The Merger Order, as modified by the June 2003 Order, also specifies that this $5 billion amount may include amounts invested in EWGs and FUCOs by FirstEnergy and GPU, Inc., at the time of the Merger Order (''Current Investments'') and amounts relating to possible transfers to EWGs of certain generating facilities owned by certain of FirstEnergy's operating utilities (''GenCo Investments'').

Under the Merger Order, the Commission reserved jurisdiction over investment in EWGs and FUCOs, other than the Current Investments and GenCo Investments, that exceed $1.5 billion. As of December 31, 2003, and on the same basis as set forth in the Merger Order, FirstEnergy's aggregate investment in EWGs and FUCOs was approximately $1.13 billion, an amount significantly below the $5 billion amount authorized in the Merger Order. Additionally, as of December 31, 2003, consolidated retained earnings were $1.6 billion. By way of comparison, FirstEnergy's consolidated retained earnings as of December 31, 2002 were $1.52 billion.

With respect to rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) have occurred. For the reasons given above, the requirements of rule 53(c) are satisfied.

As a result, the Commission has considered the effect on the FirstEnergy system of the capitalization or earnings of any FirstEnergy subsidiary that is an EWG or FUCO in determining whether to approve the proposed transactions. Applicants state that since the date of the Merger Order, there has been no material adverse impact on FirstEnergy's consolidated capitalization resulting from its investments in EWGs and FUCOs, and the proposed transaction will not have any material impact on FirstEnergy's capitalization. As of December 31, 2003, FirstEnergy's consolidated capitalization consisted of 40.1% common equity, 1.6% cumulative preferred stock, 55.8% long-term debt and 2.5% short-term debt. As of December 31, 2001 those ratios were as follows: 30.3% common equity, 3.1% cumulative preferred stock, 63.1% long-term debt and 3.5% short-term debt. FirstEnergy maintains that its operating public-utility subsidiaries remain financially sound companies as indicated by their investment grade ratings from nationally recognized rating agencies for their senior secured debt.

Since the date of the Merger Order, FirstEnergy's investments in EWGs and FUCOs have contributed positively to its level of earnings, other than for the negative impact on earnings due to FirstEnergy's writedowns of its investments in Avon Energy Partners Holdings and GPU Empresa Distribuidora Electrica Regional S.A. Finally, since the date of the Merger Order, and, after taking into account the effects of FirstEnergy's acquisition of GPU, there has been no material change in FirstEnergy's level of earnings from EWG's and FUCOs. On February 2, 2004 FirstEnergy announced that it had completed the sale of all of its remaining operating FUCO assets.

IV. Conclusion

FirstEnergy states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. FirstEnergy estimates that the total amount of all fees, commissions and expenses to be incurred in connection with the proposed transactions will not exceed $35,000. FirstEnergy has engaged the services of Innisfree M&A Incorporated to assist in the Solicitation and has agreed to pay Innisfree M&A Incorporated a fee for its services which is not expected to exceed $12,500, plus reimbursement of expenses. Solicitation will also be made in person or by telephone, mail or other electronic means, and may be made by officers and employees of FirstEnergy.

It is ordered, under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of FirstEnergy common stock become effective immediately, subject to the terms and conditions of rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7322 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49486; File No. SR–NASD–2004–036]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify NASD Rule 7010(p)(3) To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

March 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to revise and update the fee schedule for OTC Bulletin Board (''OTCBB'') historical trading activity reports. Nasdaq has stated that it would implement the revised and updated fee schedule on March 15, 2004, if the Commission approves the proposed rule change by that date, or as soon as practicable following Commission approval of the proposed rule change, if such approval occurs after March 15, 2004.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets.]

7010. System Services

(a)–(o) (No change).

(p) Historical Research and Administrative Reports

(1) (No change).

(2) (No change).

(3) The charge to be paid by the purchaser of an Historical Research Report regarding OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be [as follows] *determined in accordance with the following schedule:*

[(A) Daily Detailed Reports—$7 per day, per security and/or market participant for reports containing 15 fields or less. $15 per day, per security and/or market participant for reports exceeding 15 fields.]

[(B) Summary Level Activity Reports—$25 per report.]

	Number of fields of information in the report		
	1–10	*11–15*	*16 or more*
A. Issues Summary Statistics.			
For a security for a day	*$10*	*$15*	*$20*
For a security for a month, quarter, or year	*20*	*30*	*40*
For all issues for a day	*50*	*75*	*100*
For all issues for a month, quarter, or year	*100*	*150*	*200*
B. Intra-Day Quote and Intra-Day Time and Sales Data.			
For a security and/or a market participant for a day	*15*	*25*	*35*
For all market participants for a day or for all securities for a day (For purposes of this report, market participants are those entities qualified to participate in the OTCBB service pursuant to NASD Rule 6540(a) and (b)).	*30*	*40*	*50*
C. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.			
D. ALL OTCBB Issurers Directory		*250*	

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to revise and update the fee schedule for the OTCBB historical trading activity reports to bring the fees and types of reports in line with those charged for similar reports available for Nasdaq listed securities on NasdaqTrader.com. The proposed revised fee schedule seeks to ensure that the costs of providing such reports are allocated equitably among the users of such reports. Nasdaq believes that the proposed fee schedule is reasonable and that the per-field pricing structure for OTCBB.com reports is similar to the per-field pricing structure for NasdaqTrader.com reports.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[3] in general, and with section 15A(b)(5) of the Act,[4] in particular, in that the revised proposed fee schedule would provide for the equitable allocation of reasonable charges among the persons ordering historical trading activity reports from NasdaqTrader.com and OTCBB.com.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–036. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 Nasdaq. All submissions should refer to the File No. SR–NASD–2004–036 and should be submitted by April 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7323 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*o*–3.

[4] 15 U.S.C. 78*o*–3(b)(5).

[5] 17 CFR.200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49476; File No. SR–NYSE–2004–09]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. to Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

March 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 123C to change the procedures for entry and publication of imbalances in market-on-close and limit-on-close orders. The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123C (Market-on-the-Close Policy and Expiration Procedures) [3] defines market-on-close (''MOC'') and limit-on-close (''LOC'') orders. An MOC order is a market order that is to be executed in its entirety at the closing price. If not executed due to a trading halt or because of its terms, (*e.g.,* buy minus or sell plus), this type of order will be cancelled. Furthermore, NYSE Rule 123C defines an LOC order as one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC orders are prioritized on the specialist's book by time of entry and go behind all other orders on the specialist book at that price regardless of when such other orders are received. LOC orders with prices that are better than the closing price in the subject security are guaranteed an execution unless there is a trading halt in the security. LOC orders limited at the closing price are not guaranteed an execution.

Current Procedures

NYSE Rule 123C requires that all MOC and LOC orders be entered by 3:40 p.m. in any stock on any trading day, unless entered to offset a published imbalance, or on either side of the market if a regulatory halt is in effect at 3:40 p.m. or occurs after that time. Floor brokers representing MOC/LOC orders in any stock must communicate their irrevocable MOC/LOC interest to the specialist by 3:40 p.m. In addition, NYSE Rule 123C prohibits the cancellation of MOCs and LOCs after 3:40 p.m., except in the case of legitimate error (*e.g.,* side, size, symbol, price, or duplication of an order), when a regulatory trading halt is in effect at, or occurs after, 3:40 p.m., or to comply with the provisions of NYSE Rule 80A.[4]

Between 3:40 and 3:50 p.m., MOC/LOC orders are irrevocable, except to correct a legitimate error, when a regulatory trading halt is in effect at or occurs after 3:40 p.m., or to comply with the provisions of NYSE Rule 80A.

In the case of a regulatory halt, MOC orders may be entered until 3:50 p.m. or until the stock reopens, whichever occurs first, even if an imbalance publication occurred prior to the regulatory halt. Cancellation or reductions in size of MOC/LOC orders after 3:50 p.m. are not permitted for any reason, including in case of legitimate error or to comply with the provisions of NYSE Rule 80A.

Proposed Rule Amendments

The Exchange is proposing to amend NYSE Rule 123C to provide that all MOC orders, including those entered by brokers in the crowd, must be entered electronically by 3:50 p.m, rather than by 3:40 p.m. As under the current rule, no orders may be cancelled after 3:50 p.m.

The Exchange believes that requiring MOC interest to be electronically entered will increase the efficiency at the point of sale. Publications will be systemically generated, allowing for greater control in active trading crowds and providing accurate information immediately to all participants. Furthermore, the Exchange believes that moving the MOC cut-off from 3:40 p.m. to 3:50 p.m. will allow traders and floor brokers greater control of the execution of their customer's orders and greater participation in active markets. As a result of the proposed change, market participants will be able to use SuperDot to guarantee the closing price for the balance of their orders by allowing such participants an additional ten minutes to interact in active markets.

LOC Orders

The Exchange is proposing to amend NYSE Rule 123C to provide that LOC orders must also be entered electronically by 3:50 p.m., except for orders entered to offset final MOC imbalance publications. LOC orders entered to offset final MOC imbalances must also be entered electronically and priced using the last sale at time of such publication as the order's best limit (*e.g.,* sell LOC must be limited to the last sale or higher). The Exchange believes that the same rationale that justifies the proposed amendments to MOC orders (as described above) also applies here. Furthermore, the Exchange believes that by encouraging the use of LOC orders to add liquidity to the close, the Exchange expects to achieve minimal price dislocations.

In addition, the Exchange proposes to disseminate LOC interest through various Exchange venues including NYSE OPENBOOK (''Openbook''). In order to implement this initiative, the Exchange will include LOC interest information in its OpenBook information dissemination.[5]

Publication of MOC Imbalances

Currently, NYSE Rule 123C provides that the last sale price at 3:40 p.m. is used for the first imbalance publication, and 3:50 p.m. for the second imbalance publication. The Exchange is proposing to amend NYSE Rule 123C to provide that the last sale price at 3:50 p.m. be used for the only imbalance publication, as this would conform the rule with the proposal to move the MOC cut-off time from 3:40 p.m. to 3:50 p.m.

In addition, NYSE Rule 123C requires that if an imbalance or ''no imbalance'' notice is published at 3:40 p.m., a significant imbalance or one of 50,000 shares or more (or, in their absence, a no imbalance notice) must be published as soon as possible after 3:50 p.m.

The Exchange is proposing to amend NYSE Rule 123C to provide that orders to offset published imbalances must be entered electronically and will be accepted in time priority only to the extent of the published imbalance. Paper orders will not be accepted. In addition, the Exchange is proposing that any offset order or unexecuted portion will be cancelled electronically.

The Exchange is also proposing that if an imbalance pairs-off prior to 3:55 p.m., the specialist shall publish that fact. As soon as practicable after 3:55 p.m., the specialist shall publish the then-existing imbalance, if it is greater than 50,000 shares (or such other size as approved by a Floor Official), or shall publish a ''no imbalance'' message.

These proposed changes to NYSE Rule 123C will require technology upgrades to the Exchange systems utilized for MOC/LOC order processing, the schedule for which is being determined. The Exchange will notify its membership and the Commission of the timing of implementation of the proposed changes to NYSE Rule 123C. Additionally, after the Commission has approved these proposed rule changes, the Exchange intends to issue an

[3] The Exchange's Market-On-Close/Limit-On-Close Policy has been codified as NYSE Rule 123C. See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2003–31).

[4] NYSE Rule 80A requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.,* buy minus or sell plus) when the Dow Jones Industrial Average (''DJIA'') declines below/advances above its closing value on the previous trading day by at least 2.0% rounded down to the nearest 10 points, of the average closing value of the DJIA for the last month of the previous quarter. When these Rule provisions are triggered, an MOC index arbitrage order without the appropriate tick restriction must be cancelled by 3:50 p.m. unless it is related to an expiring derivative index product.

[5] The dissemination of LOC interest information in the Exchange's OpenBook is the current change proposed by the NYSE in order to implement its electronic LOC order entry initiative. *See,* March 24, 2004 telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and A. Michael Pierson, Attorney, Division of Market Regulation, Commission.

Information Memo to inform its members of the revised procedures.

2. Statutory Basis

The NYSE believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NYSE–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR–NYSE–2004–09 and should be submitted by April 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7275 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49477; File No. SR–OCC–2003–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Clearing Agreement

March 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 31, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the Futures Agreement for Clearing and Settlement Services (''PBOT Agreement''), dated October 23, 2003, between OCC and the Philadelphia Board of Trade (''PBOT'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PBOT intends to commence trading in cash-settled foreign currency futures. PBOT and OCC have entered into the PBOT Agreement pursuant to which OCC will provide clearing and settlement services for such contracts.[3] The PBOT Agreement is substantially similar to other futures related clearing agreements that were previously filed with the Commission, but it provides only for the clearance and settlement of cash-settled foreign currency futures.[4] To the extent that any terms of the PBOT Agreement are not traceable to one of OCC's other futures related clearing agreements, those terms are immaterial.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] OCC already changed its by-laws and rules to accommodate the introduction of cash-settled foreign currency futures. Securities Exchange Act No. 49126 (January 25, 2004), 69 FR 04552 (January 30, 2004) [File No. SR–2003–07].

[4] Securities Exchange Act Release Nos. 46722 (October 25, 2002), 67 FR 67230 (November 4, 2002) File No. [SR–OCC–2002–13] (amended and restated clearing agreement with NQLX), 46058 (June 10, 2002), 67 FR 41287 (June 17, 2002) File No. [SR–OCC–2002–08] (security futures clearing agreement with IFX), and 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) File No. [SR–OCC–2002–07] (security futures clearing agreement with ONE).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(f)(4)[6] thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2003–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent either in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All submissions should refer to the File No. SR–OCC–2003–12 and should be submitted by April 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7276 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49478; File No. SR–OCC–2003–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Minimum Net Capital Requirements for Appointed Clearing Members

March 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 22, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would specify minimum net capital requirements for appointed clearing members, which are OCC clearing members that facilitate stock settlement for other clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's by-laws define an ''underlying security'' with respect to physically settled stock options and stock futures to mean the security or other asset that OCC is obligated to sell or purchase upon exercise or maturity of the contract. Normally, underlying securities are delivered and paid for through the facilities of the National Securities Clearing Corporation (''NSCC''), and clearing members that are eligible to clear and carry stock options and stock futures contracts must be NSCC participants except as otherwise provided in OCC's rules. OCC's by-laws and rules permit a clearing member (''Appointing Clearing Member'') that is not an NSCC member to appoint another clearing member (''Appointed Clearing Member'') that is an NSCC member to deliver or to receive underlying securities and to effect payment therefore through the facilities of NSCC obligations of the Appointing Clearing Member.

In connection with providing stock settlement services, an Appointed Clearing Member may be subject to increased risk of operational or other errors that could be charged against the Appointed Clearing Member's net capital. As a result, OCC has determined that Appointed Clearing Members should be required to maintain a specified minimum amount of net capital in order to perform such services. Therefore, OCC is proposing new Rule 309A to apply to stock settlement arrangements between clearing members the minimum net capital standards that currently are applied to facilities management arrangements between clearing members in Rule 309. This minimum net capital standard would require every Appointed Clearing Member to maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of OCC Rule 302 or (ii) the sum of (A) $2,000,000 plus (B) $100,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member effects settlements.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it specifies the minimum net capital requirement for clearing members that facilitate stock settlements on behalf of other clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2003–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All submissions should refer to the File No. SR–OCC–2003–09 and should be submitted by April 16, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7277 Filed 3–31–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49487; File No. SR–PCX–2004–05]

Self-Regulatory Organizations; Pacific Exchange, Inc; Order Approving Proposed Rule Change Imposing a Connectivity Fee Applicable to Non-Members That Maintain a Connectivity Line With the Exchange

March 26, 2004.

On January 28, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Floor, Market Maker and Remote Market Maker portion of its Schedule of Fees and Charges (''Schedule'') in order to create a connectivity fee of $300 per line per month that would be applicable to non-members that maintain a connectivity line with the Exchange.[3] The proposed rule change was published for comment in the **Federal Register** on February 24, 2004.[4] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, particularly, section 6(b)(4) of the Act.[6] The Commission believes that amending the Exchange's rule to impose such a connectivity fee should promote equitable allocation of fees and other charges among Exchange members and other persons using the Exchange's facilities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2004–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7324 Filed 3–21–04; 8:45 am]

BILLING CODE 8010–01–U

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX recently implemented this charge for its members. *See* Securities Exchange Act Release No. 48970 (December 22, 2003), 68 FR 75306 (December 30, 2003).

[4] *See* Securities Exchange Act Release No. 49263 (February 17, 2004), 69 FR 8509.

[5] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4676]

Termination of Chemical and Biological Weapons Proliferation Sanctions Against a Foreign Person

SUMMARY: The United States Government has determined to terminate sanctions imposed on a foreign person who had engaged in chemical weapons proliferation activities that required the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(d) of the Arms Export Control Act (22 U.S.C. 2798(d)) and Section 11C(d) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2410c(d)), the Under Secretary of State for Arms Control and International Security Affairs determined and certified to Congress that reliable information indicated that the following foreign person has ceased

to aid or abet any foreign government, project, or entity in its efforts to acquire chemical and biological weapons capability: Anatoliy Kuntsevich

This determination and certification terminates the sanctions imposed on this foreign person in 1995 pursuant to Section 81(a) and (c) of the Arms Export Control Act and Section 11C(a) and (c) of the Export Administration Act. (60 FR 62526.):

Dated: March 26, 2004.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–7340 Filed 3–31–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4678]

Bureau of Educational and Cultural Affairs; Program Title: Global Connections and Exchange Program

ACTION: Request for grant proposals.

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for the Global Connections and Exchange program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the Global Connections and Exchange program in (1) Azerbaijan and/or (2) for other countries with significant Muslim populations. The Bureau's emphasis for Program (2) is on countries in the Middle East/North Africa, South Asia, East Asia, and sub-Saharan Africa. Countries in Europe and Eurasia (excluding Turkey) are not eligible. The Bureau will award one grant for the Azerbaijan program and one to three grants for the second program. The grantee organizations and/or their partners will select overseas schools and provide them with access to the Internet and related training to develop collaborative school partnerships with U.S. schools. Thematic online projects will enhance learning, research and cross-border communication among participating schools. All Global Connections and Exchange activities will be undertaken in regular and consistent consultation with the Public Affairs Section (PAS) of the U.S. Embassy in each participating country.

Program Information

Overview

Global Connections and Exchange is designed to introduce youth to a broad range of ideas and resources while enhancing the use of information technology in schools. Through this program, overseas secondary schools will expand computer literacy skills, improve general education, and gain a deeper understanding of U.S. society, culture, and values. American students will in turn gain a greater understanding of foreign cultures. The goals of the program are:

- Provide access to information via the Internet that enhances general education.
- Improve educational tools, resources, and learning through the application of information technology, complementary teacher training, online resource development, school partnerships, and student collaboration.
- Prepare a cadre of students with the necessary skills to allow them to apply for other exchange and academic study opportunities in the U.S.
- Generate personal and institutional ties across borders among students, educators and their schools.
- Ensure the sustainability of information technology and Internet access in schools partnered under this grant.

Please refer to the POGI document for program specifics.

Guidelines

Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation. Should organizations wish to apply for more than one program, they must submit a separate proposal for each. Each of the two programs will be judged independently. You MUST refer to the individual Project Objectives, Goals and Implementation (POGI) guidelines that are specific to each program.

Program 1—Azerbaijan: Total funding: $460,000. ECA will award one grant. The grant period will be 12 months in duration. The grant is intended to build on a network of schools that have benefited from three years of Bureau grant-funding since 2001.

Program 2—Countries with significant Muslim populations: Total funding: $1,600,000. This program is a continuation of a program started in 2002 and expanded in 2003. The program office encourages creative ideas and innovative approaches to connectivity and exchange. ECA may award one grant for the whole amount or up to three grants for an amount of not less than $500,000 each. Therefore, an organization may apply to conduct the entire program, or it may apply to work on a slightly smaller scale and request a commensurate grant amount. The intent is to provide a small number of grants to organizations working with a broad network of countries. The grant period will be 18 months in duration. Applicants should select the countries with which they plan to work and present a strong justification for their choices in their proposals.

For both programs, applicants must demonstrate their capacity for conducting programs of this nature. This includes administrative infrastructure in the geographic areas from which schools will be selected and resources to link the foreign schools with schools in the U.S. and other countries to facilitate substantive online programs.

The grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this Request for Grant Proposals (RFGP). The grants should begin on or about August 1, 2004, subject to availability of funds. Sub-grant and consortium arrangements are possibilities.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Pending successful implementation of this program and the availability of funds in subsequent fiscal years, the Bureau reserves the right to renew this grant for two additional fiscal years, before competing it again.

Budget Guidelines

All organizations applying under this competition must demonstrate in their proposal narrative a minimum of four years experience managing and conducting international exchange programs. Bureau grant guidelines require that organizations with less than four years experience conducting and managing international exchanges be limited to $60,000 in Bureau funding. Since the grant or grants awarded under the competition will exceed the $60,000 ceiling, organizations with less than four years experience, per above, are not eligible to apply under this competition.

Applicants must submit a summary budget that includes all program components as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Administrative costs, including indirect rates, should be kept to a minimum and cost-shared as much as possible. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA/PE/C/PY–04–49.

Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, and contact information on all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel (*e.g.*, teachers trained in country, students collaborating in online projects).

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA or the Grantee (program office: please specify which) will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW.,Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 260–6520, and fax (202) 203–7529, e-mail *OrourkeMM@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau of Education and Cultural Affairs Program Officer Matt O'Rourke on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at: *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is May 17, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline, but received at ECA more than seven days after the deadline, will be ineligible for further consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of each application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–04–49, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by

the program office, as well as the State Department Geographic Area Office and Public Diplomacy section at the U.S. Embassy overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should display an understanding of the goals of the program, as reflected in the priorities of this RFGP. Exchange activities should ensure efficient use of program resources. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of the program.

2. *Program planning:* A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. Responsibilities of partnering organizations should be clearly described.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's goals and plan. The substance of workshops, online projects and exchange activities should be described in detail and included as an attachment.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of schools and participants, program venue and program evaluation) and program content. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. *Institutional Capacity/Record/Ability:* Applicants should demonstrate knowledge of each country's educational environment and the capacity to recruit U.S. schools. Proposals should present significant experience in developing school-based Internet programs and exhibit an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and objectives.

6. *Multiplier Effect/Impact:* The program should strengthen long-term mutual understanding and facilitate curriculum reform. Applicants should detail how schools will share newly-acquired knowledge and skills with others.

7. *Program Monitoring and Evaluation:* Proposals must include a plan and methodology to evaluate the program's successes and challenges, both as the activities unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a description of performance indicators and measurement tools. Applicants should provide draft questionnaires or other techniques for use in surveying schools/participants to facilitate the demonstration of results. The grantee organization will indicate its willingness to submit periodic progress reports in accordance with the program office's expectations.

8. *Follow-on and Sustainability:* Proposals should provide a strategy for the continuation of the schools' capacity to implement Internet access and online linkages without the Bureau's financial support. The proposal should address continued integrated use of computers and the Internet in participating schools.

9. *Cost-effectiveness/Cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower ''per school'' figures will be more competitive, the Bureau expects all figures to be realistic. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authorities for this program are provided through the Fulbright-Hays Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 28, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–7342 Filed 3–31–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4677]

Lifting of Nonproliferation Measures Against Four Russian Entities

SUMMARY: A determination has been made, pursuant to Section 6 of Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998, to remove nonproliferation measures on four Russian entities.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of

Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA''), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Section 6 of Executive Order 12938 of November 14, 1994, as amended, a determination was made on March 23, 2004, that it is in the foreign policy and national security interests of the United States to remove the restrictions imposed pursuant to Sections 4(b), 4(c), and 4(d) of the Executive Order on the following Russian entities, their sub-units and successors:

1. Europalace 2000
2. Grafit (aka State Scientific Research Institute of Graphite or NIIGRAFIT)
3. MOSO Company
4. The Scientific Research and Design Institute of Power Technology (aka NIKIET, Research and Development Institute of Power Engineering (RDIPE), and ENTEK).

These restrictions were imposed on the first three entities on July 30, 1998 (*see* 63 FR 42089) and on the fourth entity on January 8, 1999 (*see* 64 FR 2935).

Dated: March 24, 2004.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–7341 Filed 3–31–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4675]

Lifting of Nonproliferation Statutory and Discretionary Measures Against Two Russian Entities, TZNII Central Scientific Research Institute of Precision Machine Building (aka Tzniitochmash) and Volsk Mechanical Plant

SUMMARY: A determination has been made, pursuant to section 620H of the Foreign Assistance Act of 1961, as amended, section 543 of the Foreign Operations, Export Financing, and Related Programs Appropriations, Division D, of the Consolidated Appropriations Act, 2004 (Pub. L. 108–99), and similar provisions in previous annual Foreign Operations, Export Financing, and Related Programs Appropriations acts, and Executive Order 12163, as amended, to waive the statutory assistance ban on two Russian entities. The United States Government also has determined to remove discretionary nonproliferation measures on the same two Russian entities.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ron Parson, Office of Export Controls and Conventional Arms Nonproliferation Policy, Bureau of Nonproliferation, Department of State, (202–647–0397).

SUPPLEMENTARY INFORMATION: Pursuant to section 620H of the Foreign Assistance Act of 1961, as amended, section 543 of the Foreign Operations, Export Financing, and Related Programs Appropriations, Division D, of the Consolidated Appropriations Act, 2004 (Pub. L. 108–99), and similar provisions in previous annual Foreign Operations, Export Financing, and Related Programs Appropriations acts, and Executive Order 12163, as amended, a determination was made on March 23, 2004, that furnishing assistance restricted by any of the foregoing provisions of law to TZNII Central Scientific Research Institute of Precision Machine-Building (aka Tzniitochmash) and Volsk Mechanical Plant is important to the national interests of the United States. On the same date, a determination was made pursuant to the authorities of the Foreign Assistance Act and the Arms Export Control Act that it is no longer the policy of the United States Government to deny all types of United States Government assistance to these two entities or to deny licenses and other approvals of defense articles and services for export to these two entities.

These restrictions were imposed on the entities on April 29, 1999 (*see* 64 FR 23148), and June 9, 1999 (*see* 64 FR 31029).

Dated: March 26, 2004.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–7339 Filed 3–31–04; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–17195]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

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

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2003–17195.

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov*.

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Manuel A. Almeida

Mr. Almeida, age 56, underwent surgery for a retinal detachment in his left eye in 2000. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/400. His optometrist examined him in 2003 and certified, ''In my opinion, Mr. Almeida has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Almeida submitted that he has driven tractor-trailer combinations for 35 years, accumulating 2.6 million miles. He holds a Class A commercial driver's license (CDL) from Massachusetts. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. James C. Askin

Mr. Askin, 32, has amblyopia in his right eye. The visual acuity in his right eye is 20/400 and in the left, 20/20. His optometrist examined him in 2003 and stated, ''It is my opinion that James C. Askin has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Askin reported that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.5 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no accidents and one conviction for a moving violation '' speeding '' in a CMV. He exceeded the speed limit by 10 mph.

3. Paul J. Bannon

Mr. Bannon, 39, experienced a retinal detachment in his right eye in 1981. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''The critical issue is that Mr. Bannon has sufficient peripheral vision to operate a commercial vehicle. His best-corrected vision using both eyes is 20/20. This is also sufficient in the tasks required to operate a commercial vehicle.'' Mr. Bannon submitted that he has driven straight trucks and tractor-trailer combinations for 18 years, accumulating 540,000 miles in the former and 180,000 miles in the latter. He holds a Class A CDL from Delaware. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

4. Ernie E. Black

Mr. Black, 39, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''In my medical opinion, he has more than ample vision to operate a commercial vehicle.'' Mr. Black reported that he has driven straight trucks for 9 years, accumulating 270,000 miles. He holds a Class C driver's license from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. Gary O. Brady

Mr. Brady, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his optometrist certified, ''My medical opinion is that Gary O. Brady has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brady reported that he has driven straight trucks for 5 years, accumulating 350,000 miles, and tractor-trailer combinations for 8 years, accumulating 600,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Michael C. Branham

Mr. Branham, 47, has amblyopia in his right eye. His visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''My medical opinion is that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle without glasses.'' Mr. Branham reported that he has driven tractor-trailer combinations for 24 years, accumulating 3.0 million miles. He holds a Class DM driver's license from South Carolina currently, but at the time of his application he held a Class AM CDL, now expired. His driving record for the last 3 years shows no crashes and one conviction for a moving violation '' speeding '' in a CMV. He exceeded the speed limit by 9 mph.

7. Stephen H. Goldcamp

Mr. Goldcamp, 49, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2003 and noted he has ''sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Goldcamp reported that he has driven straight trucks for 8 years, accumulating 272,000 miles, and tractor-trailer combinations for 16 years, accumulating 576,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Steven F. Grass

Mr. Grass, 34, lost the vision in his left eye due to an injury at age 2. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, ''Mr. Grass is very well adapted to using only the vision in his right eye. I believe that there is no reason for him to not be able to operate a commercial vehicle safely.'' Mr. Grass reported that he has driven tractor-trailer combinations for 10 years, accumulating 453,000 miles. He holds a

Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

9. Donald E. Hathaway

Mr. Hathaway, 51, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/70. Following an examination in 2003, his optometrist certified, ''It is my opinion that, with spectacle correction, Donald Hathaway has sufficient vision to perform the required tasks to operate a commercial vehicle.'' Mr. Hathaway reported that he has driven straight trucks for 12 years, accumulating 420,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Michael S. Johannsen

Mr. Johannsen, 44, lost the vision in his left eye in 2000 due to injury. The visual acuity in his right eye is 20/15. Following an examination in 2003 his opththalmologist stated, ''I believe that Mr. Johannsen has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johannsen reported that he has driven straight trucks for 9 years, accumulating 207,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. Mearl C. Kennedy

Mr. Kennedy, 49, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. Following an examination in 2003, his ophthalmologist certified, ''In my medical opinion, Mearl (Ken) Kennedy has sufficient vision to perform the task of operating a commercial vehicle.'' Mr. Kennedy reported that he has driven straight trucks for 32 years, accumulating 480,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

12. Wai Fung King

Mr. King, 36, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/50 and in the left, 20/20. His ophthalmologist examined him in 2003 and noted, ''Patient has sufficient vision to operate a commercial vehicle.'' Mr. King submitted that he has driven straight trucks for 9 years, accumulating 252,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. Christopher J. Meerten

Mr. Meerten, 27, has a congenital cataract in his right eye. His visual acuity in the right eye is counting fingers and in the left, 20/15. Following an examination in 2003, his optometrist certified, ''I believe he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Meerten reported that he has driven tractor-trailer combinations for 5 years, accumulating 20,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

14. William J. Miller

Mr. Miller, 55, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. His ophthalmologist examined him in 2003 and certified, ''It is my medical opinion that Mr. Miller is as safe driving as someone with a much milder amblyopia. As such, I would urge that he be given a driver's license with the only restriction being the wearing of corrective lenses.'' Mr. Miller reported that he has driven tractor-trailer combinations for 10 years, accumulating 1.0 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

15. Robert J. Mohorter

Mr. Mohorter, 46, has a corneal scar and aphakia in his right eye due to an injury at age 8. His visual acuity in the right eye is light perception only and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''In my professional opinion, due to his excellent acuity and his full field of vision, Robert Mohorter has sufficient visual abilities to operate a commercial vehicle.'' Mr. Mohorter reported that he has driven tractor-trailer combinations for 20 years, accumulating 3.0 million miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

16. James A. Mohr

Mr. Mohr, 59, lost his left eye due to an injury in 1954. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his ophthalmologist certified, ''It is my opinion that he has vision adequate enough to be certified as a commercial driver.'' Mr. Mohr reported that he has driven straight trucks for 5 years accumulating 100,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.0 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 18 mph.

17. Charles R. Murphy

Mr. Murphy, 53, has a retinal scar in his left eye due to injury 30 years ago. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. His optometrist examined him in 2003 and stated, ''It is my medical opinion that this scar has been there for many years and that he has sufficient vision to perform the tasks to drive a commercial vehicle.'' Mr. Murphy submitted that he has driven tractor-trailer combinations for 30 years, accumulating 3.6 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—''failure to obey traffic sign''—in a CMV.

18. Lacy L. Patterson

Mr. Patterson, 65, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/60. Following an examination in 2003, his optometrist certified, ''In my medical opinion, Lacy Lavarn Patterson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Patterson reported that he has driven tractor-trailer combinations for 42 years, accumulating 4.2 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Roderick F. Peterson

Mr. Peterson, 33, lost the vision in his left eye due to trauma in childhood. The visual acuity in his right eye is 20/15. His ophthalmologist examined him in 2003 and stated, ''I believe Mr. Peterson, in light of the fact that this was a childhood trauma, has developed excellent coping skills and should be able to drive commercial vehicles safely.'' Mr. Peterson reported that he has driven straight trucks for 13 years, accumulating 390,000 miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

20. Stephen P. Preslopsky

Mr. Preslopsky, 48, has had decreased vision in his left eye for 10 years due to injury. His best-corrected visual acuity in the right eye is 20/20 and in the left, counting fingers. Following an examination in 2003, his ophthalmologist certified, ''It is my opinion that Mr. Preslopsky's vision is sufficient to operate a commercial vehicle, however, this is only from a medical standpoint since I do not know what is actually required to perform this task.'' Mr. Preslopsky reported that he has driven straight trucks for 8 years, accumulating 220,000 miles, and tractor-trailer combinations for 15 years, accumulating 715,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Timothy J. Sands

Mr. Sands, 41, experienced nerve damage in his left eye due to an injury at age 14. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. His ophthalmologist examined in 2003 and stated, ''It is my medical opinion that Mr. Sands does possess adequate vision, and that he does have sufficient visual field function in his injured eye and normal right eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sands reported that he has driven straight trucks for 12 years, accumulating 186,000 miles, and tractor-tractor combinations for 2 years, accumulating 82,000 miles. He holds a Class A CDL from Alaska. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

22. Donald W. Sidwell

Mr. Sidwell, 66, experienced a retinal detachment in his right eye in 1989. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''In my medical opinion, Mr. Sidwell has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sidwell reported that he has driven straight trucks for 35 years, accumulating 350,000 miles, and tractor-trailer combinations for 14 years, accumulating 1.1 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

23. David M. Smith

Mr. Smith, 35, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his optometrist certified, ''I feel he would have sufficient vision to safely operate a commercial vehicle.'' Mr. Smith reported that he has driven tractor-trailer combinations for 4 years, accumulating 240,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 20 mph.

24. Jose M. Suarez

Mr. Suarez, 41, underwent laser treatment for a macular scar in his right eye in 1998. His best-corrected visual acuity in the right eye is 20/50 and in the left, 20/15. Following an examination in 2003, his ophthalmologist certified, ''In my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Suarez reported that he has driven tractor-trailer combinations for 9 years, accumulating 450,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

25. Robert L. Swartz, Jr.

Mr. Swartz, 56, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/15. Following an examination in 2003, his optometrist certified, ''I find no visual problems with Mr. Swartz driving a commercial vehicle.'' Mr. Swartz reported that he has driven straight trucks for 26 years, accumulating 338,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

26. Elmer Kevin Thomas

Mr. Thomas, 40, has had reduced vision in his left eye for 3 years due to histoplasmosis. His best-corrected visual acuity in the right eye is 20/20 and in the left, only peripheral light perception. His optometrist examined him in 2003 and noted, ''Kevin's daily performance and his good peripheral field results lead me to believe Kevin's vision is sufficient to operate a commercial vehicle.'' Mr. Thomas reported that he has driven straight trucks and tractor-trailer combinations for 9 years, accumulating 234,000 miles in the former and 900,000 miles in the latter. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

27. Robert L. Vaughn

Mr. Vaughn, 70, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2003, his ophthalmologist stated, ''It is my medical opinion that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Vaughn submitted that he has driven tractor-trailer combinations for 30 years, accumulating 3.4 million miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

28. Richard G. Wendt

Mr. Wendt, 47, has amblyopia in his right eye. His visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2003, his optometrist certified, ''Mr. Wendt's vision remains unchanged since the first time I examined him August 6, 2001, and he retains visual function sufficient to operate a commercial vehicle.'' Mr. Wendt reported that he has driven straight trucks for 23 years, accumulating 690,000 miles. He holds a Class B CDL from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. Richard A. Yeager

Mr. Yeager, 55, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. His optometrist examined him in 2003 and stated, ''My medical opinion is Richard Yeager has sufficient vision to perform driving tasks that are required to drive a commercial vehicle.'' Mr. Yeager submitted that he has driven tractor-trailer combinations for 14 years, accumulating 1.8 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: March 25, 2004.

Rose A. McMurray,

Associate Administrator for Policy and Program Development.

[FR Doc. 04–7243 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5748, FMCSA–99–6156, FMCSA–99–6480, FMCSA–2001–10578]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 14, 2004. Comments from interested persons should be submitted by May 3, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5748, FMCSA–99–6156, FMCSA–99–6480, and FMCSA–2001–10578 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 14 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 14 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Mark K. Cheely
Richard J. Cummings
Glenn E. Gee
Robert N. Heaton
Laurent G. Jacques
Alfred G. Jeffus
Michael W. Jones
Earl E. Martin
Robert W. Nicks
Tommy L. Ray, Jr.
Andrew W. Schollett
Edward J. Sullivan
Steven L. Valley
Stephen D. Vice

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 14 applicants has satisfied the

entry conditions for obtaining an exemption from the vision requirements (64 FR 40404, 64 FR 66962, 67 FR 17102, 64 FR 54948, 65 FR 159, 67 FR 10475, 64 FR 68195, 65 FR 20251, 66 FR 53826, 66 FR 66966). Each of these 14 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 3, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 25, 2004.

Rose A. McMurray,

Associate Administrator for Policy and Program Development.

[FR Doc. 04–7244 Filed 3–31–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 3, 2004 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0091.
Form Number: None.
Type of Review: Extension.
Title: Regulations Governing U.S. Treasury Certificates of Indebtedness—State and Local Government.
Description: Regulations authorizing the issuing of U.S. Treasury Bonds, Notes, and Certificated of Indebtedness of the State and Local Government Series.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 167 hours.

OMB Number: 1535–0092.
Form Number: PD F 4144, 4144–1, 4144–2, 4144–5, 4144–6, 4144–7 and 4144–8.
Type of Review: Extension.
Title: Subscription for Purchases and Issue of U.S. Treasury Securities—State and Local Government Series.
Description: The information is necessary to establish the accounts of owners of securities of State and Local Government Series.
Respondents: State, Local or Tribal Government.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 2,500 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7266 Filed 3–31–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 3, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0582.
Form Number: IRS Form 1139.
Type of Review: Extension.
Title: Corporation Application for Tentative Refund.
Description:Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is proper.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 3,000.
Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—27 hr., 10 min.
Learning about the law or the form—4 hr., 7 min.
Preparing the form—9 hr., 24 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 127,140 hours.
Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue

Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7267 Filed 3–31–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 3, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0004.

Form Number: IRS Form SS–8.

Type of Review: Extension.

Title: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Description: Form SS–8 is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses this information to make the determination.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 6,900.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—22 hr.

Learning about the law or the form—47 min.

Preparing and sending the form to the IRS—1 hr., 11 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 165,462 hours.

OMB Number: 1545–0962.

Publication Number: Publication 1075.

Type of Review: Extension.

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

Description: Internal Revenue Code section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protest the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government, State, Local or Tribal Government

Estimated Number of Respondents: 5,100.

Estimated Burden Hours Respondent: 40 hours.

Frequency of response: Annually.

Estimated Total Reporting Burden: 204,000 hours.

OMB Number: 1545–1036.

Form Number: IRS Form 8716.

Type of Review: Extension.

Title: Election of Have a Tax Year Other Than a Required Tax Year.

Description: Filed by partnerships, S Corporations, and personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.

Respondents: Business or other for-profit, farms.

Estimated Number of Respondents/ Recordkeepers: 40,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—2 hr., 37 min.

Learning about the law or the form—1 hr., 12 min.

Preparing and sending the form to the IRS—1 hr., 16 min.

Frequency of response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 204,400 hours.

OMB Number: 1545–1625.

Regulation Project Numbers: REG–105170–97 and REG–112991–01 Final.

Type of Review: Extension.

Title: Credit for Increasing Research Activities.

Description: These final regulations relate to the computation of the credit under section 41© and the definition of *qualified research* under section 41(d). These regulations are intended to provide (1) guidance concerning the requirements necessary to qualify for the credit for increasing research activities, (2) guidance in computing the credit for increasing research activities, and (3) rules for electing and revoking the election of the alternative incremental credit.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5.

Estimated Burden Hours Respondent/ Recordkeeper: 50 hours.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 150 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7268 Filed 3–31–04; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 25, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0990.

Form Number: IRS Form 8610 and Schedule A (Form 8610).

Type of Review: Extension.

Title: Form 8610: Annual Law-Income Housing Credit Agencies Report; and

Schedule A (Form 8610): Carryover Allocation of Low-Income Housing Credit.

Description: State housing agencies file Form 8610 to transmit copies of Form 8609, Schedule A (Form 8610), and binding agreements and election statements to the IRS. The Agencies use Schedule A (Form 8610) to report certain information contained in carryover allocation documents to the IRS.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 53.

Estimated Burden Hours Respondent/ Recordkeeper:

	Form 8610	Schedule A (Form 8610)
Recordkeeping	10 hr., 2 min.	2 hr., 52 min.
Learning about the law or the form	2 hr., 17 min.	24 min.
Preparing and sending the form to the IRS	2 hr., 32 min.	27 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 5,638 hours.

OMB Number: 1545–1219.

Form Number: IRS Form 8038–T.

Type of Review: Extension.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 2,500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—11 hr., 57 min.

Learning about the law or the form—8 hr., 44 min.

Preparing, copying, assembling, and sending the form to the IRS—9 hr., 19 min.

Frequency of response: Other (at least once every five years).

Estimated Total Reporting/ Recordkeeping Burden: 75,050 hours.

OMB Number: 1545–1569.

Form Number: IRS Form 8861.

Type of Review: Extension.

Title: Welfare-to-Work Credit.

Description: Section 51A of the Internal Revenue Code allows employers an income tax credit of 35% of the first $10,000 of the first-year wages and 50% of the first $10,000 of second-year wages paid to long-term family assistance recipients. The credit is part of the general business audit.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—8 hr., 22 in.

Learning about the law or the form—1 hr., 35 min.

Preparing and sending the form to the IRS—1 hr., 48 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 5,875 hours.

OMB Number: 1545–1584.

Form Number: IRS Form 8859.

Type of Review: Extension.

Title: District of Columbia First-Time Homebuyer Credit.

Description: Form 8859 is used to claim the DC First-Time Homebuyer Credit. The information collected will be used to verify that the credit was computed correctly.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,900.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—19 min.

Learning about the law or the form—6 min.

Preparing the form—22 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of response: Other (once).

Estimated Total Reporting/ Recordkeeping Burden: 2,166 hours.

OMB Number: 1545–1709.

Form Number: IRS Form 8868.

Type of Review: Extension.

Title: Application for Extension of Time to File an Exempt Organization Return.

Description: Internal Revenue Code (IRC) 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by fiduciaries and certain exempt organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 248,932.

Estimated Burden Hours Respondent/ Recordkeeper:

	Form 8868	
	Part I	Part II
Recordkeeping	5 hr., 30 min.	5 hr., 18 min.
Learning about the law or the form	6 min.	0 min.
Preparing and sending the form to the IRS	11 min.	4 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,373,335 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7328 Filed 3–31–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
April 1, 2004

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 240

Indorsement and Payment of Checks Drawn on the United States Treasury; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AA45

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the rule governing the indorsement and payment of checks drawn on the United States Treasury and the remedies available when checks are lost or stolen and then negotiated by someone other than the intended payee. In instances where losses occur, Part 240 provides for the allocation of losses between the Federal Government and indorsers of the check. Part 240 also provides notice of how Treasury will collect debts owed by banks and other indorsers when they fail to pay claims arising under its terms.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, (202) 874–7573, *ronald.brooks@fms.treas.gov,* Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725-D, Hyattsville, Maryland 20782. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays. A copy of this final rule is being made available on the Financial Management Service Web site at the following address: *http://www.fms.treas.gov/checkclaims/31_CFR_240.pdf.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 23, 2003, The Financial Management Service (FMS) issued a Notice of Proposed Rulemaking (NPRM) (68 FR 20046) proposing changes constituting a comprehensive revision of 31 CFR Part 240 (Part 240). The NPRM addressed, in part, the time for first examination of Treasury checks, the apportionment of risk when losses occur, deceased payee check intercepts, declination protests, the use of debt collection tools in the collection of reclamation debts, and the use of powers of attorney. The NPRM also included changes made in an Interim Rule issued on May 24, 2002, which related to Treasury Check Offset (TCO) (67 FR 36517). This final rule addresses issues raised in comments submitted in response to the NPRM and finalizes the NPRM with changes. In addition, it supercedes the Interim Rule. FMS did not receive any comments on the Interim Rule.

The revised regulation includes provisions governing how checks may be indorsed, and remedies available to payees and other indorsers when checks are lost or stolen and then subsequently negotiated by someone other than the intended payee. In instances where losses occur, such as when a check bearing a fraudulent indorsement is paid, the regulation provides for the allocation of losses between the Government and indorsers of the check. The regulation also provides notice of how Treasury will collect debts owed by financial institutions and other indorsers when they fail to pay claims arising under the terms of this regulation.

II. Summary of Comments

We received 12 comments in response to the NPRM. Comments were received from credit unions, credit union associations, bank associations, and one bank. The comments reflected particular interest in the following four issues: (1) The definition of a material defect or alteration (§ 240.2); (2) the time frame within which Treasury must complete first examination (§ 240.5); (3) protests of declinations and reclamations (§§ 240.6 and 240.8); and (4) the use of powers of attorney (§ 240.16). In addition to these four main areas of interest, comments and recommendations regarding several other sections were also submitted. A summary of these comments and Treasury's response to the comments follows.

Material Defect or Alteration

Three comments opposed the provision in § 240.2 that includes counterfeit checks within the definition of ''material defect or alteration.'' The commenters stated that Treasury is in the best position to detect counterfeit checks and therefore counterfeit checks should not be subject to reclamation. After careful consideration, we have retained counterfeit checks within the definition of ''material defect or alteration.'' Section 240.7 specifies that after final payment, Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic Treasury check and not a counterfeit check. Therefore, we believe that we have appropriately provided for those situations where a financial institution has taken ''all reasonable efforts,'' and that the risk properly lies with the financial institution if it fails to take reasonable steps necessary to detect counterfeit checks.

Three commenters suggested that Treasury provide guidance regarding what is meant by ''reasonable efforts.'' Four commenters suggested that Treasury provide guidance on detecting counterfeit checks. In response, we have added a definition of the term ''reasonable efforts'' to the definition section found at § 240.2. This new definition clarifies that ''reasonable efforts'' needed to ensure that a check is authentic include, as a minimum, verifying the existence of the U.S. Treasury watermark. However, the definition makes clear that ''reasonable efforts'' will not be the same in every instance because the minimum effort required will be dependent upon the facts of each particular case. For instance, depending on the facts, it may be reasonable to expect the verification of other security features, such as the bleeding ink or the ultraviolet overprinting. Guidance on the various security features found on U.S. Treasury checks is available on the FMS Web site at: *http://www.fms.treas.gov.* Institutions also may contact the FMS Questioned Documents Branch at (202) 874–7640 for additional information about these security features or to request training.

One commenter suggested that Treasury make an on-line database available that would enable institutions to verify check information. Although there are currently no plans to implement such a system, institutions may contact the Federal Reserve Bank of Richmond to verify limited check issue information. Institutions must remember, however, that just because a check contains the correct issue information that does not necessarily mean the check is authentic—it may only be a copy. Therefore, security features such as the watermark must also be verified. Contact information for the Federal Reserve Bank of Richmond is available on the FMS Web site at: *http://www.fms.treas.gov.*

First Examination

Section 240.5 specifies that Treasury shall have a reasonable amount of time, not to exceed 90 days, to complete first examination (unless Treasury is on notice of a question of law or fact about whether a check is properly payable). Seven commenters supported the proposed provision in § 240.5. Three

commenters opposed the 90-day time frame. Five commenters suggested a shorter time frame in which to complete first examination. Two of these five commenters stated that Treasury should complete first examination by midnight of the next business day. One commenter suggested a 30-day time frame or, in the alternative, a 30-day time frame for checks under $10,000. One commenter suggested a 45-day time frame and one commenter suggested less than 90 days but did not specify a specific number of days.

We have carefully considered the comments received relating to first examination and the concerns raised therein. Given the inherent delays that Treasury experiences in receiving check issue records from non-Treasury disbursing officials, Treasury must have sufficient time to complete first examination. The proposed rule issued in 1997 set a date certain at 150 days from the date that a check is presented to a Federal Reserve Bank for payment. The NPRM reduced this amount of time further to 90 days. Treasury has continued to work diligently to reduce the number of days necessary to complete first examination, as well as the potential for losses when issue records are not received in a timely manner. As a consequence, we have decided for the final rule to reduce the amount of time available for first examination to 60 days. Treasury will continue to strive to make additional reductions to this time frame whenever possible.

Protests

Three commenters opposed the provisions at §§ 240.6 and 240.8, which provide that only a presenting bank may protest the declination of a check and that only a reclamation debtor may protest a reclamation. Two commenters supported these provisions. In the case of declinations, Treasury declines payment only against the presenting bank. As such, it is only the presenting bank that may protest this decision. (See *Casa de Cambio Comdiv S.A. de C.V.* v. *U.S.*, 291 F.3d 1356 (Fed. Cir. 2002)). Likewise, any indorser that directly receives a reclamation has the right to protest the reclamation. Consistent with the decision of the Court in *Casa*, we have left unchanged the provisions related to who may protest a declination or reclamation.

Two commenters suggested that Treasury respond to a protest within a set time frame (one suggested 45 days, the other suggested 60 days). Treasury agrees that a protester should be able to expect a response within a reasonable time frame. Therefore, §§ 240.6 and 240.8 have been revised to provide that the deciding official will make every effort to decide the protest within 60 days of receiving a proper protest, or will provide notice of the reason for delay. We note that in some cases it is not possible to render a decision within 60 days due to the need for a referral to the Secret Service or for additional handwriting samples. In such situations, a final decision will be rendered as soon as the necessary information becomes available.

Powers of Attorney

This final rule retains the general provision that general powers of attorney may be used only to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. For all other checks, such as recurring benefit payments, a special power of attorney is required. This rule expands the use of special powers of attorney by allowing such powers of attorney to be executed in favor of any entity or individual, rather than only financial institutions as is currently the rule. One commenter opposed the continued required use of special powers of attorney. Five commenters supported the proposed expanded use of special powers of attorney.

This rule continues the mandatory use of special powers of attorney for all checks that do not qualify for the use of a general power of attorney. The reason for this decision is two-fold: First, a general power of attorney is more easily abused by the attorney-in-fact; and second, a special power of attorney must explicitly state that it does not purport to assign the right to receive payments to the attorney-in-fact or to any other person. Requiring use of a special power of attorney for payments such as recurring benefit payments ensures both that the intended recipient has a clear intent to authorize an attorney-in-fact to negotiate such payments, and that all parties seeking to rely on the power of attorney are aware that it cannot be used as a means of assigning the right to receive payment. While the rule requires the continued use of special powers of attorney, Treasury believes that removing the requirement that they be executed in the name of a financial institution will assist recipients of recurring benefit payments by affording them greater flexibility in designating an attorney-in-fact.

Three commenters suggested that Treasury keep Appendix A that provides forms for Treasury powers of attorney. These commenters felt that the forms provide a customer service and are efficient in that they include the necessary special power of attorney language. In response, this rule retains the forms in Appendix A as optional use forms. These forms are available on the FMS Web site at: *http://www.fms.treas.gov*.

Miscellaneous

One commenter suggested reducing the deadline for presenting a check claim to 90–120 days. However, since 31 U.S.C. 3702 specifies a one-year time frame within which to present a check claim, we cannot by regulation reduce this amount of time. One commenter requested that we clarify when the one-year presentment deadline begins—specifically, whether the negotiated date will be the presentment date. According to § 240.4(a), ''Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.'' Therefore, the operative dates are the check issuance date and the date of first presentment.

One commenter suggested that we address check truncation legislation such as ''Check 21'' in the final rule. We note that the Check Clearing for the 21st Century Act, Pub. L. 108–100, was enacted on October 28, 2003, and that its provisions do not become effective until October 28, 2004. Given that this is new legislation and does not become effective until October 2004, we have concluded that, to the extent Part 240 must be amended to be consistent with ''Check 21,'' that will be done in a separate regulatory action.

Section 240.18, Implementing Instructions, was removed from the final rule. Instead, specific references to the Treasury Financial Manual have been included within the body of the regulation where appropriate.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Clarity of the Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this final rule easier to understand. Please send any comments you may have on this final rule to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this final rule will not have a significant impact on a substantial number of small business entities. The major revisions to Part 240 in this final rule incorporate recent statutory changes and Court decisions, or revise current agency practices relating to implementation of Federal Claims Collection Standards (FCCS) requirements. Specifically, the provisions concerning collection procedures do not create, in and of themselves, new debt collection tools, impose new fees not authorized by law, or otherwise create new limits on the rights of affected parties, including small business entities. The provisions concerning the referral of delinquent debts to other agencies or United States disbursing officials, and the provisions concerning the collection of delinquent debts by means of Treasury check offset, are all in furtherance of specific authorities established by the Debt Collection Improvement Act of 1996 (DCIA). In particular, the DCIA provides that, ''By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset.'' 31 U.S.C. 3712(e). Consequently, any economic impact on small entities will be the result of specific statutory authority, rather than a direct result of Treasury regulations.

The provisions relating to how and when penalties and administrative costs will be added to delinquent debts represent a change in Treasury policy relating to implementation of the requirements of the FCCS. While the change in policy may result in some additional costs to small business entities, any such additional costs will be the result of Treasury's compliance with the requirements of the FCCS, and not a direct result of this regulation. Further, the impact of the change in policy will not be significant, as the costs will be waived for those who pay within 60 days of the date of reclamation; such costs will be incurred only by those who fail to pay a reclamation in a timely fashion.

Provisions relating to declinations clarify existing Treasury practices concerning the processing of checks determined to include a material defect or alteration prior to Treasury's making final payment on a check. Including such provisions benefits financial institutions, as well as the general public, by providing notice of how and when actions by Treasury to decline final payment may be protested. Accordingly, a Regulatory Flexibility Analysis is not required.

Finally, while provisions in this rule supercede existing Federal common law to the extent that such law applies to counterfeit checks, and may result in a shift in liability for losses associated with counterfeit checks, the actual amounts involved are expected to be minimal. An analysis of Treasury statistics for calendar year 2001 indicates that of 95 counterfeit checks presented to Treasury for payment, only 1 such counterfeit item took more than 30 days to detect. In that instance, the item was detected on the 105th day following presentment. Even in that instance, under the proposed rule, liability for the loss would be shifted to an indorser only if it were determined that the indorser breached the guarantee of authenticity in § 240.3(d) by failing to make all reasonable efforts to ensure that the check was authentic. Consequently, the provisions relating to liability for losses resulting from the payment of counterfeit checks is not expected to have a significant impact on a substantial number of small business entities.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

■ For the reasons stated in the preamble, part 240 of title 31 is revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

General Provisions

Sec.
240.1 Scope of regulations.
240.2 Definitions.
240.3 Presentment guarantees.
240.4 Limitations on payment; cancellation and distribution of proceeds of checks.
240.5 Provisional credit; first examination; declination; final payment.
240.6 Declination protest.
240.7 Reclamation of amounts of paid checks.
240.8 Reclamation procedures; reclamation protests.
240.9 Offset.
240.10 Treasury Check Offset.
240.11 Processing of checks.

Indorsement of Checks

240.12 Indorsement by payees.
240.13 Checks issued to incompetent payees.
240.14 Checks issued to deceased payees.
240.15 Checks issued to minor payees.
240.16 Powers of attorney.
240.17 Lack of authority to shift liability.
240.18 Reservation of rights.
Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application.

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

General Provisions

§ 240.1 Scope of regulations.

(a) The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks. Under the provisions of this regulation, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.7 of this regulation. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.5(d) of this regulation when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

§ 240.2 Definitions.

(a) *Administrative offset* or *offset*, for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR part 285.

(b) *Agency* means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

(c) *Certifying agency* means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

(d) *Check or checks* means a check or checks drawn on the United States Treasury.

(e) *Check payment* means the amount paid to a presenting bank by a Federal Reserve Bank.

(f) *Counterfeit check* means a document that purports to be an authentic check drawn on the United

States Treasury, but in fact is not an authentic check.

(g) *Days* means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under § 240.8(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

(h) *Declination* means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(i) *Declination date* means the date on which the declination is issued by Treasury.

(j) *Disbursing official* means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

(k) *Drawer's signature* means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

(l) *Federal Reserve Bank* means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

(m) *Federal Reserve Processing Center* means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

(n) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depositary institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depositary institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depositary of public money and has been permitted to charge checks to the General Account of the United States Treasury.

(o) *First examination* means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

(p) *Forged or unauthorized drawer's signature* means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

(q) *Forged or unauthorized indorsement* means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.3 and §§ 240.12 through 240.16; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

(r) *Guarantor* means a financial institution that presents a check for payment and any prior indorser(s) of a check.

(s) *Material defect or alteration* means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

(t) *Minor* means the term minor as defined under applicable State law.

(u) *Monthly statement* means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

(v) *Payee* means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

(w) *Person* means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

(x) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(y) *Provisional credit* means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.5(d).

(z) *Reasonable efforts,* for purposes of § 240.7, means, at a minimum, verifying the existence of the U.S. Treasury watermark. Based upon the facts at hand, reasonable efforts may require the verification of additional security features.

(aa) *Reclamation* means a demand for the amount of a check for which Treasury has requested an immediate refund.

(bb) *Reclamation date* means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within two business days of the reclamation date.

(cc) *Reclamation debt* means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.7.

(dd) *Reclamation debtor* means a presenting bank or other indorser of a

check from whom Treasury has demanded a refund in accordance with §§ 240.7 and 240.8. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

(ee) *Recurring benefit payment* includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

(ff) *Treasury* means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegee.

(gg) *Treasury Check Offset* means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

(hh) *U.S. securities* means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

(ii) *Writing* includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements.* That all prior indorsements are genuine, whether or not an express guarantee is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations.* That the check has not been materially altered.

(c) *Drawer's signature.* That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity.* That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

§ 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.

(a) *Limitations on payment.*

(1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks shall bear a legend, stating ''Void After One Year.'' The legend is notice to payees and indorsers of a general limitation on the payment of checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks.*

(1) Any check that has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

§ 240.5 Provisional credit; first examination; declination; final payment.

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that the check:

(1) Has a material defect or alteration; or

(2) Bears a forged or unauthorized drawer's signature.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 60 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination, Treasury will promptly refund the amount of the payment.

§ 240.6 Declination protest.

(a) *Who may protest.* Only a presenting bank may protest the declination of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest.* Where Treasury, in accordance with § 240.5, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks.* The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks.* The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures.* The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement.* The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(c) *Procedures for filing a protest.* A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700–A, PO Box 1849, 3700 East-West Highway, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.* Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the presenting bank of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the presenting bank of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in

the decision to deny payment of a check under § 240.5 of this Part.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

§ 240.7 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.5, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.3, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. Guidance on the key security features found on U.S. Treasury checks is available on the FMS Web site at: *http://www.fms.treas.gov/checkclaims/check_security.pdf.* Institutions may contact the FMS Questioned Documents Branch at (202) 874–7640 for additional information about these security features or to request training.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10), Treasury will discharge the unpaid reclamation debt. See 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 240.8 Reclamation procedures; reclamation protests.

(a) *Reclamation procedures.*

(1) Treasury will send a ''REQUEST FOR REFUND (CHECK RECLAMATION)'' to the reclamation debtor in accordance with § 240.7(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt through administrative offset in accordance with § 240.9;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.10;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.8(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.*

(1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.7 and paragraph (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it made all reasonable efforts to ensure that a check is authentic. The reclamation debtor must include evidence that the check was examined for a watermark as required under §§ 240.2(z) and 240.3. Depending on the circumstances, FMS may require evidence that the reclamation debtor also examined the check for evidence of additional security features as described in guidance provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this Part, nor does Treasury grant rights to any guarantor that are not otherwise provided in this Part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the reclamation debtor of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the Director, Financial Processing Division, or an authorized designee, will notify the reclamation debtor of the delay. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.7(a) of this Part or sending a ''REQUEST FOR REFUND (CHECK RECLAMATION)'' under § 240.8(a) of this Part.

(i) Treasury will refrain from the collection activities identified in §§ 240.9 and 240.10 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and will be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.9 and 240.10.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this section shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701, *et seq.*). No civil suit may be filed until the reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

§ 240.9 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR Part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.8(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.8(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.10, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

§ 240.10 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.7, 240.8, or 240.9, of this Part, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the

reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this Part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

§ 240.11 Processing of checks.

(a) *Federal Reserve Banks.*

(1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

(i) A check bears a material defect or alteration;

(ii) A check was issued more than one year prior to the date of presentment; or

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.14(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash checks presented directly to them by the general public.

(3) As a depositary of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury, subject to first examination and payment by Treasury;

(iii) Forward payment records, requested original checks, and copies of checks to Treasury; and

(iv) Release the original checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.5, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositaries outside the United States.*

(1) Financial institutions outside the United States designated by Treasury as depositaries of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.3, 240.7, and 240.8.

(2) If a check is to be declined under § 240.5, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefore to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.4(a) or § 240.14(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in U.S. dollars with checks drawn on or payable through U.S. financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement). Reclamation refunds shall not be deposited to Treasury's General Account.

(4) Additional information relating to designated depositaries outside the United States may be found in Volume VI, Chapter 2000, of the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

Indorsement of Checks

§ 240.12 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the named payee or by another on behalf of such named payee as set forth in this Part.

(b) *Acceptable indorsements.*

(1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee pursuant to authority expressly conferred by or under law or other regulation. An example would be: ''John Jones by Mary Jones.'' This example states the minimum indication acceptable. However, §§ 240.13, 240.14, and 240.16(f) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed ''for collection'' or ''for deposit only to the credit of the within named payee or payees.'' The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the named payee is responsible for determining whether such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by Treasury in the event of a dispute.

(3) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's authorization, the financial institution may use an indorsement substantially as follows: ''Credit to the account of the

within-named payee in accordance with the payee's instructions. XYZ [Name of financial institution].'' A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.*

(1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

§ 240.13 Checks issued to incompetent payees.

(a) *Handling of checks when a guardian or other fiduciary has been appointed.*

(1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: ''John Jones by Mary Jones, guardian of John Jones.''

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetence of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.16. After the end of the six-month period provided in §§ 240.16(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

§ 240.14 Checks issued to deceased payees.

(a) *Handling of checks when an executor or administrator has been appointed.*

(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: ''John Jones by Mary Jones, executor of the estate of John Jones.''

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the issuance of a recurring benefit payment check, that the payee died prior to the date of issuance.*

(1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed at Volume I, Part 4, Chapter 7000 of the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.* Upon receipt of such notice from a certifying agency, Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial

institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.7 and 240.8 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

§ 240.15 Checks issued to minor payees.

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

§ 240.16 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney that continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: ''John Jones by Paul Smith, attorney-in-fact for John Jones.'' Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

(h) *Optional use forms.* Optional use power of attorney forms are listed in the appendix to this part. These forms are available on the FMS Web site at: *http://www.fms.treas.gov.*

§ 240.17 Lack of authority to shift liability.

(a) This Part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this Part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this Part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

§ 240.18 Reservation of rights.

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation not otherwise required by law.

Appendix A to Part 240—Optional Forms for Powers of Attorney and Their Application

FMS Form 231—General Power of Attorney (Individual). This general power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities; (2) for tax refunds; and (3) for goods and services.

FMS Form 232—Specific Power of Attorney (Individual). This specific power of attorney form may be executed by an individual, unincorporated partnership, or sole owner to authorize the indorsement of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee.

FMS Form 233—Special Power of Attorney (Individual). This special power of attorney form may be executed by an individual, unincorporated partnership, or sole owner, to

authorize the indorsement of payments other than those listed under FMS Form 231, such as recurring benefit payments. It may name any person (as the term person is defined in 31 CFR Part 240) as attorney-in-fact, but must describe the purpose for which the checks are issued and recite that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. A special power of attorney is not effective for purposes of negotiating checks issued after the payee is determined to be incompetent, unless the payee has indicated that the special power of attorney is to: (1) Remain effective following a determination that the principal is incompetent (a durable special power of attorney); or (2) become effective following a determination that the principal is incompetent (a springing durable special power of attorney). In no instance may a special power of attorney be used as the basis for negotiation of a check drawn on the United States Treasury more than six months after a determination that the principal is incompetent.

FMS Form 234—General Power of Attorney (Corporation). This general power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact for the classes of payments listed under FMS Form 231. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 234 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

FMS Form 236—Specific Power of Attorney (Corporation). This specific power of attorney form may be executed by a corporation to authorize the indorsement by an attorney-in-fact of any class of check drawn on the United States Treasury. To be valid, the form must be executed after the issuance of the check and must describe the check in full, including the check serial and symbol numbers, date of issue, amount, and name of the payee. When authority is given to an officer of the corporation to execute a power of attorney authorizing a third person to indorse and collect checks drawn on the United States Treasury in the name of the corporation, the power of attorney on FMS Form 236 should be accompanied by FMS Form 235 (Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States), executed by the officer authorized herein to execute such a power.

Dated: March 26, 2004.

Richard L. Gregg,

Commissioner.

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 506/P.L. 108–208
Galisteo Basin Archaeological Sites Protection Act (Mar. 19, 2004; 118 Stat. 558)

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Fort Bayard National Historic Landmark Act (Mar. 19, 2004; 118 Stat. 562)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2004

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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